## EXECUTIVE MESSAGES REFERRED

As in executive session the PRESIDING OFFICER laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

## MEASURES READ THE FIRST TIME

The following bills were read the first time:

S. 3. A bill to prohibit the procedures commonly known as partial-birth abortion.

S. 13. A bill to provide financial security to family farm and business owners while ending the unfair practice of taxing someone at death.

S. 414. A bill provide an economic stimulus package, and for other purposes.

## ENROLLED BILL PRESENTED

The Secretary of the Senate reported that on today, February 14, 2003, she had presented to the President of the United States the following enrolled bill:

S. 141. An act to improve the calculation of the Federal subsidy rate with respect to certain small business loans, and for other purposes.

## INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. SANTORUM (for himself, Mr. FITZGERALD, Mr. CAMPBELL, Mr. DEWINE, Mr. FRIST, Mr. BROWNBACK, Mr. ENSIGN, Mr. INHOFE, Mr. KYL, Mr. LUGAR, Mr. ALLARD, Mr. MCCAIN, Mr. ROBERTS, Mr. SHELBY, Mr. WARNER, Mr. MCCONNELL, Mr. HATCH, Mr. VOINOVICH, Mr. HAGEL, Mr. BUNNING, Mr. DOMENICI, Mr. SMITH, Mr. GRAHAM of South Carolina, Mr. ENZI, Mr. LOTT, Mrs. DOLE, Mr. ALLEN, Mr. CORNYN, Mr. NICKLES, Mr. GRASSLEY, Mr. TALENT, Mr. BOND, Mr. THOMAS, Mr. CRAIG, Mr. CHAMBLISS, Mr. SESSIONS, Mr. GREGG, Mr. BENNETT, and Mr. COLEMAN):

S. 3. A bill to prohibit the procedure commonly known as partial-birth abortion; read the first time.

By Mr. GREGG (for himself, Mr. FRIST, Mr. MCCONNELL, Mr. SANTORUM, Mr. ALEXANDER, Mr. ENSIGN, and Mr. GRAHAM of South Carolina):

S. 4. A bill to improve access to a quality education for all students; to the Committee on Health, Education, Labor, and Pensions.

By Mr. TALENT (for himself, Mr. CHAMBLISS, Mr. CORNYN, Mr. ENZI, Mr. GRAHAM of South Carolina, Mr. SESSIONS, Mr. SHELBY, Mr. INHOFE, and Mr. SUNUNU):

S. 5. A bill to care for people in need by inspiring personal responsibility through work, family, and community; to the Committee on Finance.

By Mr. KYL:

S. 13. A bill to provide financial security to family farm and small business owners while by ending the unfair practice of taxing someone at death; read the first time.

By Mr. DASCHLE:

S. 414. A bill to provide an economic stimulus package, and for other purposes; read the first time.

By Ms. SNOWE (for herself, Mrs. MURRAY, Ms. LANDRIEU, and Mr. HARKIN):

S. 415. A bill to amend the Public Health Service Act to provide, with respect to research on breast cancer, for the increased involvement of advocates in decisionmaking at the National Cancer Institute; to the Committee on Health, Education, Labor, and Pensions.

By Ms. SNOWE (for herself, Mrs. LINCOLN, Mrs. MURRAY, Ms. LANDRIEU, Mr. HARKIN, Mr. BINGAMAN, Ms. CANTWELL, and Mr. CORZINE):

S. 416. A bill to amend title XVIII of the Social Security Act to provide for coverage under the medicare program of annual screening pap smear and screening pelvic exams; to the Committee on Finance.

By Ms. SNOWE (for herself, Mr. HARKIN, Mrs. MURRAY, and Ms. LANDRIEU):

S. 417. A bill to amend title 5, United States Code, to ensure that coverage of bone mass measurements is provided under the health benefits program for Federal employees; to the Committee on Governmental Affairs.

By Ms. SNOWE (for herself, Mrs. MURRAY, Ms. LANDRIEU, Mr. BINGAMAN, and Mr. CORZINE):

S. 418. A bill to amend the Civil Rights Act of 1964 to protect breastfeeding by new mothers; to the Committee on Health, Education, Labor, and Pensions.

By Ms. SNOWE (for herself, Mrs. MURRAY, Ms. LANDRIEU, Mr. HARKIN, and Ms. CANTWELL):

S. 419. A bill to amend title XVIII of the Social Security Act to expand coverage of bone mass measurements under part B of the medicare program to all individuals at clinical risk of osteoporosis; to the Committee on Finance.

By Mrs. DOLE:

S. 420. A bill to provide for the acknowledgement of the Lumbee Tribe of North Carolina, and for other purposes; to the Committee on Indian Affairs.

By Ms. CANTWELL (for herself, Mr. SMITH, Mrs. MURRAY, and Mrs. FEINSTEIN):

S. 421. A bill to reauthorize and revise the Renewable Energy Production Incentive program, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. BREAUX:

S. 422. A bill to amend the Tariff Act of 1930 to modify the provisions relating to drawback claims, and for other purposes; to the Committee on Finance.

By Ms. COLLINS (for herself and Mr. FEINGOLD):

S. 423. A bill to promote health care coverage parity for individuals participating in legal recreational activities or legal transportation activities; to the Committee on Health, Education, Labor, and Pensions.

By Mr. BINGAMAN (for himself, Mr. INOUYE, Mr. CAMPBELL, and Mr. DASCHLE):

S. 424. A bill to establish, reauthorize, and improve energy programs relating to Indian tribes; to the Committee on Indian Affairs.

By Mr. DASCHLE:

S. 425. A bill to revise the boundary of the Wind Cage National Park in the Sate of South Dakota; to the Committee on Energy and Natural Resources.

By Mr. DASCHLE:

S. 426. A bill to direct the Secretary of the Interior to convey certain parcels of land acquired for the Blunt Reservoir and Pierre Canal features of the initial stage of the Oahe Unit, James Division, South Dakota, to the Commission of Schools and Public Lands and the Department of Game, Fish, and Parks of the Stat of South Dakota for the purpose of mitigating lost wildlife habitat, on the condition that the current preferential leaseholders shall have an option to purchase the parcels from the Commission, and for other purposes; to the Committee on Energy and Natural Resources.

## SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. LOTT (for himself and Mr. DODD):

S. Res. 60. A resolution authorizing expenditures by the Committee on Rules and Administration; to the Committee on Rules and Administration.

## ADDITIONAL COSPONSORS

S. 56

At the request of Mr. JOHNSON, the name of the Senator from Nevada (Mr. REID) was added as a cosponsor of S. 56, a bill to restore health care coverage to retired members of the uniformed services.

S. 272

At the request of Mr. SANTORUM, the name of the Senator from Mississippi (Mr. COCHRAN) was added as a cosponsor of S. 272, a bill to provide incentives for charitable contributions by individuals and businesses, to improve the public disclosure of activities of exempt organizations, and to enhance the ability of low income Americans to gain financial security by building assets, and for other purposes.

S. 274

At the request of Mr. GRASSLEY, the name of the Senator from Alabama (Mr. SESSIONS) was added as a cosponsor of S. 274, a bill to amend the procedures that apply to consideration of interstate class actions to assure fairer outcomes for class members and defendants, and for other purposes.

S. 330

At the request of Mr. CAMPBELL, the name of the Senator from Oregon (Mr. SMITH) was added as a cosponsor of S. 330, a bill to further the protection and recognition of veterans' memorials, and for other purposes.

## STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. SANTORUM (for himself, Mr. FITZGERALD, Mr. CAMPBELL, Mr. DEWINE, Mr. FRIST, Mr. BROWNBACK, Mr. ENSIGN, Mr. INHOFE, Mr. KYL, Mr. LUGAR, Mr. ALLARD, Mr. MCCAIN, Mr. ROBERTS, Mr. SHELBY, Mr. WARNER, Mr. MCCONNELL, Mr. HATCH, Mr. VOINOVICH, Mr. HAGEL, Mr. BUNNING, Mr. DOMENICI, Mr. SMITH, Mr. GRAHAM of South Carolina, Mr. ENZI, MR. LOTT, Mrs. DOLE, Mr. ALLEN, Mr. CORNYN, Mr. NICKLES, Mr. GRASSLEY, Mr. TALENT, Mr. BOND, Mr. THOMAS, Mr.

CRAIG, Mr. CHAMBLISS, Mr. SESSIONS, Mr. GREGG, Mr. BENNETT, and Mr. COLEMAN):

S. 3. A bill to prohibit the procedure commonly known as partial-birth abortion; read the first time.

Mr. SANTORUM. Mr. President, I rise today to introduce the Partial Birth Abortion Ban Act of 2003. I am joined in introducing this bill by 38 of my colleagues, over a third of the Senate. This bill is written to prohibit one particularly gruesome, inhumane, and medically unaccepted late term abortion method, except when the procedure is necessary to save the life of the mother. Partial birth abortion is a procedure that is performed over a 3-day period in the second or third trimester of pregnancy. In this particular abortion technique, the physician delivers all but the head of a living baby through the birth canal, stab the baby in the base of the skull with curved scissors, and the uses a suction catheter to remove the child's brain. This procedure kills the baby. After collapsing the skull, the doctor completes the procedure. According to Ron Fitzsimmons of the National Coalition of Abortion Providers, this procedure is performed on a healthy mother with a healthy fetus that is 20 weeks or more along in the vast majority of cases.

The American public finds this procedure repugnant. A recent CNN/USA Today/Gallup poll indicated that 70 percent of Americans favored laws making it illegal to perform partial birth abortions, except when necessary to save the life of the mother. This procedure is also unrecognized by the mainstream medical community as a valid abortion procedure. The American Medical Association has said this procedure is ''not good medicine,'' is ''ethically wrong,'' and ''not an accepted 'medical practice'.''

As far back as the 104th Congress, the Senate and the House of Representatives both acted to ban this procedure. Unfortunately, President Clinton vetoed that bill. The House voted to override that veto, but the Senate fell short. Likewise, during the 105th Congress, the House and Senate acted to pass a bill banning this procedure. Again, President Clinton vetoed that bill banning an abortion procedure that occurs as the child is inches from being completely outside the mother. The House subsequently overrode his veto. The Senate failed to override by just three votes. In the 106th Congress as well, the Senate and the House both acted to overwhelmingly pass legislation banning this procedure.

A little over two years ago, the U.S. Supreme Court, in its Stenberg versus Carhart decision, struck down a similar, but not identical, law in the state of Nebraska that banned partial birth abortions. The Stenberg majority opinion voiced concern that the description of the abortion procedure as described in the Nebraska law was vague and might apply to other types of late-term abortions. A second concern was that the law did not provide an exception for those instances when the banned procedure was judged necessary to preserve the health of the mother.

Last year, during the 107th Congress, Representative STEVE CHABOT of Ohio introduced a bill responding to those concerns. This bill passed the House of Representatives by a vote of 274–151. Unfortunately, the Senate was kept from considering this bill.

Today, I introduced a similar bill banning the horrific procedure of partial birth abortion, except when necessary to save the life of a mother. To respond to the Supreme Court's concerns in Stenberg, this bill provides a very precise definition of the partial birth abortion procedure to make it very clear what procedure is meant.

Second, the Court based its decision in Stenberg on the federal district court's factual findings regarding the safety of the partial birth abortion procedure. These findings were highly disputed and inconsistent with the overwhelming weight of authority on the issue—including evidence presented at the Stenberg trial, other trials challenging partial birth abortion bans, and at the extensive Congressional hearings that have been held over the years. Despite the lack of evidence supporting the district court's findings, the Supreme Court was required to accept them because of the ''clearly erroneous'' standard that is applied to lower court factual findings. However, under well-settled Supreme Court jurisprudence, the Congress is not required to accept these ''factual findings,'' but is entitled to reach its own factual findings—findings that the Supreme Court accords great deference—and may enact legislation based on these findings. The bill I introduce today includes a series of findings from congressional hearings held over the years and from expert testimony that demonstrates that a partial birth abortion is never necessary to preserve the health of the mother, poses significant health risks to the woman, and is outside the standard of medical care.

Over the years, during the consideration of this ban, proponents of partial birth abortion have supported their arguments for this procedure with myth and misinformation. When the time comes for the full Senate to consider this bill, I look forward to again countering those untruths with the truth, and I ask my colleagues to vote to ban partial birth abortion.

It is long past time for the U.S. Senate to again pass a bill banning partial birth abortion. I am pleased that the Senate leadership has seen this as a legislative priority for the 108th Congress. The House and Senate have overwhelming supported such a ban time and time again. President Bush has asked us to send him a bill to end the practice of partial birth abortion. The American people clearly believe this is a procedure that should be prohibited. I appreciate the support of so many of my colleagues who have joined me in introducing this bill. And I am hopeful—very hopeful—that the 108th Congress will not end before this bill becomes law, before children in the very process of being born are protected by the laws of this great nation of ours.

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By Mr. DASCHLE:

S.414. A bill to provide an economic stimulus package, and for other purposes; read the first time.

Mr. DASCHLE. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 414

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE; AMENDMENT OF 1986 CODE; TABLE OF CONTENTS.**

(a) SHORT TITLE.—This Act may be cited as the ''Economic Recovery Act of 2003''.

(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

(c) TABLE OF CONTENTS.—

## TITLE I—BROAD-BASED TAX CUT

### SEC. 101. BROAD-BASED TAX CUT.

(a) IN GENERAL.—The Secretary of the Treasury shall pay, out of any money in the Treasury not otherwise appropriated, to each eligible taxpayer an amount equal to 10 percent of the eligible portion of the taxpayer's adjusted gross income (as defined in section 62 of the Internal Revenue Code of 1986) for a taxable year beginning in 2002.

(b) ELIGIBLE TAXPAYER.—For purposes of this section, the term ''eligible taxpayer'' means any individual other than—

(1) any estate or trust,

(2) any nonresident alien, or

(3) any individual with respect to whom a deduction under section 151 of such Code is allowable to another taxpayer for a taxable year beginning in 2003.

(c) ELIGIBLE PORTION.—For purposes of this section—

(1) IN GENERAL.—With respect to each eligible taxpayer, the eligible portion shall be equal to the sum of—

(A) $3,000 ($6,000 in the case of a taxpayer filing a joint return under section 6013 of such Code), plus

(B) $3,000 for each qualifying child of the taxpayer, not to exceed $6,000.

(2) QUALIFYING CHILD.—The term ''qualifying child'' has the meaning given such term by section 24(c) of such Code.

(d) REMITTANCE OF PAYMENT.—The Secretary of the Treasury shall remit the payment described in subsection (a) to the taxpayer as soon as practicable after the date of the enactment of this section.

## TITLE II—BUSINESS TAX CUT

### SEC. 201. INCREASED BONUS DEPRECIATION.

(a) IN GENERAL.—Subsection (k) of section 168 (relating to accelerated cost recovery system) is amended—

(1) by adding at the end of paragraph (1) the following new flush sentence:

''In the case of any qualified property acquired by the taxpayer pursuant to a written binding contract which was entered into after December 31, 2002, subparagraph (A) shall be applied by substituting '50 percent' for '30 percent'.'',

(2) by striking ''September 11, 2004'' each place it appears and inserting ''January 1, 2004'',

(3) by striking ''SEPTEMBER 11, 2004'' and inserting ''JANUARY 1, 2004'', and

(4) by striking ''PRE-SEPTEMBER 11, 2004'' and inserting ''PRE-JANUARY 1, 2004''.

(b) CONFORMING AMENDMENTS.—

(1) The heading for clause (i) of section 1400L(b)(2)(C) of the Internal Revenue Code of 1986 is amended by striking ''30 PERCENT ADDITIONAL'' and inserting ''ADDITIONAL''.

(2) Section 1400L(b)(2)(D) of such Code is amended by inserting ''(as in effect on the day after the date of the enactment of this section)'' after ''section 168(k)(2)(D)''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to property acquired after December 31, 2002.

### SEC. 202. MODIFICATIONS TO EXPENSING UNDER SECTION 179.

(a) INCREASE OF AMOUNT WHICH MAY BE EXPENSED.—

(1) IN GENERAL.—Paragraph (1) of section 179(b) (relating to dollar limitation) is amended to read as follows:

''(1) DOLLAR LIMITATION.—The aggregate cost which may be taken into account under subsection (a) for any taxable year shall not exceed $25,000 ($75,000 in the case of any taxable year beginning in 2003).''

(2) INCREASE IN PHASEOUT THRESHOLD.—Paragraph (2) of section 179(b) is amended by striking ''$200,000'' and inserting ''$200,000 ($325,000 in the case of any taxable year beginning in 2003)''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service in taxable years beginning after December 31, 2002.

### SEC. 203. CREDIT FOR EMPLOYEE HEALTH INSURANCE EXPENSES.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 (relating to business-related credits) is amended by adding at the end the following:

**''SEC. 45G. EMPLOYEE HEALTH INSURANCE EXPENSES.**

''(a) GENERAL RULE.—For purposes of section 38, in the case of a qualified small employer, the employee health insurance expenses credit determined under this section is an amount equal to the applicable percentage of the amount paid by the taxpayer during the taxable year for qualified employee health insurance expenses.

''(b) APPLICABLE PERCENTAGE.—For purposes of subsection (a), the applicable percentage is equal to—

''(1) 50 percent in the case of an employer with less than 26 qualified employees,

''(2) 40 percent in the case of an employer with more than 25 but less than 36 qualified employees, and

''(3) 30 percent in the case of an employer with more than 35 but less than 51 qualified employees.

''(c) PER EMPLOYEE DOLLAR LIMITATION.—The amount of qualified employee health insurance expenses taken into account under subsection (a) with respect to any qualified employee for any taxable year shall not exceed the maximum employer contribution for self-only coverage or family coverage (as applicable) determined under section 8906(a) of title 5, United States Code, for the calendar year in which such taxable year begins.

''(d) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

''(1) QUALIFIED SMALL EMPLOYER.—

''(A) IN GENERAL.—The term 'qualified small employer' means any small employer which provides eligibility for health insurance coverage (after any waiting period (as defined in section 9801(b)(4)) to all qualified employees of the employer.

''(B) SMALL EMPLOYER.—

''(i) IN GENERAL.—For purposes of this paragraph, the term 'small employer' means, with respect to any calendar year, any employer if such employer employed an average of not less than 2 and not more than 50 qualified employees on business days during either of the 2 preceding calendar years. For purposes of the preceding sentence, a preceding calendar year may be taken into account only if the employer was in existence throughout such year.

''(ii) EMPLOYERS NOT IN EXISTENCE IN PRECEDING YEAR.—In the case of an employer which was not in existence throughout the 1st preceding calendar year, the determination under clause (i) shall be based on the average number of qualified employees that it is reasonably expected such employer will employ on business days in the current calendar year.

''(2) QUALIFIED EMPLOYEE HEALTH INSURANCE EXPENSES.—

''(A) IN GENERAL.—The term 'qualified employee health insurance expenses' means any amount paid by an employer for health insurance coverage to the extent such amount is attributable to coverage provided to any employee while such employee is a qualified employee.

''(B) EXCEPTION FOR AMOUNTS PAID UNDER SALARY REDUCTION ARRANGEMENTS.—No amount paid or incurred for health insurance coverage pursuant to a salary reduction arrangement shall be taken into account under subparagraph (A).

''(C) HEALTH INSURANCE COVERAGE.—The term 'health insurance coverage' has the meaning given such term by paragraph (1) of section 9832(b) (determined by disregarding the last sentence of paragraph (2) of such section).

''(3) QUALIFIED EMPLOYEE.—The term 'qualified employee' means an employee of an employer who, with respect to any period, is not provided health insurance coverage under—

''(A) a health plan of the employee's spouse,

''(B) title XVIII, XIX, or XXI of the Social Security Act,

''(C) chapter 17 of title 38, United States Code,

''(D) chapter 55 of title 10, United States Code,

''(E) chapter 89 of title 5, United States Code, or

''(F) any other provision of law.

''(4) EMPLOYEE—The term 'employee'—

''(A) means any individual, with respect to any calendar year, who is reasonably expected to receive at least $5,000 of compensation from the employer during such year,

''(B) does not include an employee within the meaning of section 401(c)(1), and

''(C) includes a leased employee within the meaning of section 414(n).

''(5) COMPENSATION.—The term 'compensation' means amounts described in section 6051(a)(3).

''(e) CERTAIN RULES MADE APPLICABLE.—For purposes of this section, rules similar to the rules of section 52 shall apply.

''(f) DENIAL OF DOUBLE BENEFIT.—No deduction or credit under any other provision of this chapter shall be allowed with respect to qualified employee health insurance expenses taken into account under subsection (a).

''(g) TERMINATION.—This section shall not apply to taxable years beginning after December 31, 2003.''.

(b) CREDIT TO BE PART OF GENERAL BUSINESS CREDIT.—Section 38(b) (relating to current year business credit) is amended by striking ''plus'' at the end of paragraph (14), by striking the period at the end of paragraph (15) and inserting '', plus'', and by adding at the end the following:

''(16) the employee health insurance expenses credit determined under section 45G.''.

(c) CREDIT ALLOWED AGAINST MINIMUM TAX.—

(1) IN GENERAL.—Subsection (c) of section 38 (relating to limitation based on amount of tax) is amended by redesignating paragraph (3) as paragraph (4) and by inserting after paragraph (2) the following new paragraph:

''(3) SPECIAL RULES FOR EMPLOYEE HEALTH INSURANCE CREDIT.—

''(A) IN GENERAL.—In the case of the employee health insurance credit—

''(i) this section and section 39 shall be applied separately with respect to the credit, and

''(ii) in applying paragraph (1) to the credit—

''(I) the amounts in subparagraphs (A) and (B) thereof shall be treated as being zero, and

''(II) the limitation under paragraph (1) (as modified by subclause (I)) shall be reduced by the credit allowed under subsection (a) for the taxable year (other than the employee health insurance credit).

''(B) EMPLOYEE HEALTH INSURANCE CREDIT.—For purposes of this subsection, the term 'employee health insurance credit' means the credit allowable under subsection (a) by reason of section 45G(a).''.

(2) CONFORMING AMENDMENT.—Subclause (II) of section 38(c)(2)(A)(ii) is amended by striking ''(other'' and all that follows through ''credit)'' and inserting ''(other than the empowerment zone employment credit or the employee health insurance credit)''.

(d) NO CARRYBACKS.—Subsection (d) of section 39 (relating to carryback and carryforward of unused credits) is amended by adding at the end the following:

''(11) NO CARRYBACK OF SECTION 45G CREDIT BEFORE EFFECTIVE DATE.—No portion of the unused business credit for any taxable year which is attributable to the employee health insurance expenses credit determined under section 45G may be carried back to a taxable year ending before the date of the enactment of section 45G.''.

(e) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1 is amended by adding at the end the following:

''Sec. 45G. Employee health insurance expenses.''.

(f) EMPLOYER OUTREACH.—The Internal Revenue Service shall, in conjunction with the Small Business Administration, develop materials and implement an educational program to ensure that business personnel are aware of—

(1) the eligibility criteria for the tax credit provided under section 45G of the Internal Revenue Code of 1986 (as added by this section),

(2) the methods to be used in calculating such credit,

(3) the documentation needed in order to claim such credit, and

(4) any available health plan purchasing alliances established under title II,

so that the maximum number of eligible businesses may claim the tax credit.

(g) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid or incurred in taxable years beginning after December 31, 2002.

**SEC. 204. BROADBAND INTERNET ACCESS TAX CREDIT.**

(a) IN GENERAL.—Subpart E of part IV of chapter 1 (relating to rules for computing investment credit) is amended by inserting after section 48 the following new section:

**''SEC. 48A. BROADBAND INTERNET ACCESS CREDIT.**

''(a) GENERAL RULE.—For purposes of section 46, the broadband credit for any taxable year is the sum of—

''(1) the current generation broadband credit, plus

''(2) the next generation broadband credit.

''(b) CURRENT GENERATION BROADBAND CREDIT; NEXT GENERATION BROADBAND CREDIT.—For purposes of this section—

''(1) CURRENT GENERATION BROADBAND CREDIT.—The current generation broadband credit for any taxable year is equal to 10 percent of the qualified expenditures incurred with respect to qualified equipment providing current generation broadband services to qualified subscribers and taken into account with respect to such taxable year.

''(2) NEXT GENERATION BROADBAND CREDIT.—The next generation broadband credit for any taxable year is equal to 20 percent of the qualified expenditures incurred with respect to qualified equipment providing next generation broadband services to qualified subscribers and taken into account with respect to such taxable year.

''(c) WHEN EXPENDITURES TAKEN INTO ACCOUNT.—For purposes of this section—

''(1) IN GENERAL.—Qualified expenditures with respect to qualified equipment shall be taken into account with respect to the first taxable year in which—

''(A) current generation broadband services are provided through such equipment to qualified subscribers, or

''(B) next generation broadband services are provided through such equipment to qualified subscribers.

''(2) LIMITATION.—

''(A) IN GENERAL.—Qualified expenditures shall be taken into account under paragraph (1) only with respect to qualified equipment—

''(i) the original use of which commences with the taxpayer, and

''(ii) which is placed in service,

after December 31, 2002.

''(B) SALE-LEASEBACKS.—For purposes of subparagraph (A), if property—

''(i) is originally placed in service after December 31, 2002, by a person, and

''(ii) sold and leased back by such person within 3 months after the date such property was originally placed in service,

such property shall be treated as originally placed in service not earlier than the date on which such property is used under the leaseback referred to in clause (ii).

''(d) SPECIAL ALLOCATION RULES.—

''(1) CURRENT GENERATION BROADBAND SERVICES.—For purposes of determining the current generation broadband credit under subsection (a)(1) with respect to qualified equipment through which current generation broadband services are provided, if the qualified equipment is capable of serving both qualified subscribers and other subscribers, the qualified expenditures shall be multiplied by a fraction—

''(A) the numerator of which is the sum of the number of potential qualified subscribers within the rural areas and the underserved areas which the equipment is capable of serving with current generation broadband services, and

''(B) the denominator of which is the total potential subscriber population of the area which the equipment is capable of serving with current generation broadband services.

''(2) NEXT GENERATION BROADBAND SERVICES.—For purposes of determining the next generation broadband credit under subsection (a)(2) with respect to qualified equipment through which next generation broadband services are provided, if the qualified equipment is capable of serving both qualified subscribers and other subscribers, the qualified expenditures shall be multiplied by a fraction—

''(A) the numerator of which is the sum of—

''(i) the number of potential qualified subscribers within the rural areas and underserved areas, plus

''(ii) the number of potential qualified subscribers within the area consisting only of residential subscribers not described in clause (i),

which the equipment is capable of serving with next generation broadband services, and

''(B) the denominator of which is the total potential subscriber population of the area which the equipment is capable of serving with next generation broadband services.

''(e) DEFINITIONS.—For purposes of this section—

''(1) ANTENNA.—The term 'antenna' means any device used to transmit or receive signals through the electromagnetic spectrum, including satellite equipment.

''(2) CABLE OPERATOR.—The term 'cable operator' has the meaning given such term by section 602(5) of the Communications Act of 1934 (47 U.S.C. 522(5)).

''(3) COMMERCIAL MOBILE SERVICE CARRIER.—The term 'commercial mobile service carrier' means any person authorized to provide commercial mobile radio service as defined in section 20.3 of title 47, Code of Federal Regulations.

''(4) CURRENT GENERATION BROADBAND SERVICE.—The term 'current generation broadband service' means the transmission of signals at a rate of at least 1,000,000 bits per second to the subscriber and at least 128,000 bits per second from the subscriber.

''(5) MULTIPLEXING OR DEMULTIPLEXING.—The term 'multiplexing' means the transmission of 2 or more signals over a single channel, and the term 'demultiplexing' means the separation of 2 or more signals previously combined by compatible multiplexing equipment.

''(6) NEXT GENERATION BROADBAND SERVICE.—The term 'next generation broadband service' means the transmission of signals at a rate of at least 22,000,000 bits per second to the subscriber and at least 5,000,000 bits per second from the subscriber.

''(7) NONRESIDENTIAL SUBSCRIBER.—The term 'nonresidential subscriber' means a person who purchases broadband services which are delivered to the permanent place of business of such person.

''(8) OPEN VIDEO SYSTEM OPERATOR.—The term 'open video system operator' means any person authorized to provide service under section 653 of the Communications Act of 1934 (47 U.S.C. 573).

''(9) OTHER WIRELESS CARRIER.—The term 'other wireless carrier' means any person (other than a telecommunications carrier, commercial mobile service carrier, cable operator, open video system operator, or satellite carrier) providing current generation broadband services or next generation broadband service to subscribers through the wireless transmission of energy through radio or light waves.

''(10) PACKET SWITCHING.—The term 'packet switching' means controlling or routing the path of a digitized transmission signal which is assembled into packets or cells.

''(11) PROVIDER.—The term 'provider' means, with respect to any qualified equipment—

''(A) a cable operator,

''(B) a commercial mobile service carrier,

''(C) an open video system operator,

''(D) a satellite carrier,

''(E) a telecommunications carrier, or

''(F) any other wireless carrier,

providing current generation broadband services or next generation broadband services to subscribers through such qualified equipment.

''(12) PROVISION OF SERVICES.—A provider shall be treated as providing services to a subscriber if—

''(A) a subscriber has been passed by the provider's equipment and can be connected to such equipment for a standard connection fee,

''(B) the provider is physically able to deliver current generation broadband services or next generation broadband services, as applicable, to such subscribers without making more than an insignificant investment with respect to any such subscriber,

''(C) the provider has made reasonable efforts to make such subscribers aware of the availability of such services,

''(D) such services have been purchased by one or more such subscribers, and

''(E) such services are made available to such subscribers at average prices comparable to those at which the provider makes available similar services in any areas in which the provider makes available such services.

''(13) QUALIFIED EQUIPMENT.—

''(A) IN GENERAL.—The term 'qualified equipment' means equipment which provides current generation broadband services or next generation broadband services—

''(i) at least a majority of the time during periods of maximum demand to each subscriber who is utilizing such services, and

''(ii) in a manner substantially the same as such services are provided by the provider to subscribers through equipment with respect to which no credit is allowed under subsection (a)(1).

''(B) ONLY CERTAIN INVESTMENT TAKEN INTO ACCOUNT.—Except as provided in subparagraph (C) or (D), equipment shall be taken into account under subparagraph (A) only to the extent it—

''(i) extends from the last point of switching to the outside of the unit, building, dwelling, or office owned or leased by a subscriber in the case of a telecommunications carrier,

''(ii) extends from the customer side of the mobile telephone switching office to a transmission/receive antenna (including such antenna) owned or leased by a subscriber in the case of a commercial mobile service carrier,

''(iii) extends from the customer side of the headend to the outside of the unit, building, dwelling, or office owned or leased by a subscriber in the case of a cable operator or open video system operator, or

''(iv) extends from a transmission/receive antenna (including such antenna) which transmits and receives signals to or from multiple subscribers, to a transmission/receive antenna (including such antenna) on the outside of the unit, building, dwelling, or office owned or leased by a subscriber in the case of a satellite carrier or other wireless carrier, unless such other wireless carrier is also a telecommunications carrier.

''(C) PACKET SWITCHING EQUIPMENT.—Packet switching equipment, regardless of location, shall be taken into account under subparagraph (A) only if it is deployed in connection with equipment described in subparagraph (B) and is uniquely designed to perform the function of packet switching for current generation broadband services or next generation broadband services, but only if such packet switching is the last in a series of such functions performed in the transmission of a signal to a subscriber or the first in a series of such functions performed in the transmission of a signal from a subscriber.

''(D) MULTIPLEXING AND DEMULTIPLEXING EQUIPMENT.—Multiplexing and demultiplexing equipment shall be taken into account under subparagraph (A) only to the extent it is deployed in connection with equipment described in subparagraph (B) and is uniquely designed to perform the function of multiplexing and demultiplexing packets or cells of data and making associated application adaptions, but only if such multiplexing or demultiplexing equipment is located between packet switching equipment described in subparagraph (C) and the subscriber's premises.

''(14) QUALIFIED EXPENDITURE.—

''(A) IN GENERAL.—The term 'qualified expenditure' means any amount—

''(i) chargeable to capital account with respect to the purchase and installation of qualified equipment (including any upgrades thereto) for which depreciation is allowable under section 168, and

''(ii) incurred after December 31, 2002, and before January 1, 2004.

''(B) CERTAIN SATELLITE EXPENDITURES EXCLUDED.—Such term shall not include any expenditure with respect to the launching of any satellite equipment.

''(15) QUALIFIED SUBSCRIBER.—The term 'qualified subscriber' means—

''(A) with respect to the provision of current generation broadband services—

''(i) a nonresidential subscriber maintaining a permanent place of business in a rural area or underserved area, or

''(ii) a residential subscriber residing in a dwelling located in a rural area or underserved area which is not a saturated market, and

''(B) with respect to the provision of next generation broadband services—

''(i) a nonresidential subscriber maintaining a permanent place of business in a rural area or underserved area, or

''(ii) a residential subscriber.

''(16) RESIDENTIAL SUBSCRIBER.—The term 'residential subscriber' means an individual who purchases broadband services which are delivered to such individual's dwelling.

''(17) RURAL AREA.—The term 'rural area' means any census tract which—

''(A) is not within 10 miles of any incorporated or census designated place containing more than 25,000 people, and

''(B) is not within a county or county equivalent which has an overall population density of more than 500 people per square mile of land.

''(18) RURAL SUBSCRIBER.—The term 'rural subscriber' means a residential subscriber residing in a dwelling located in a rural area or nonresidential subscriber maintaining a permanent place of business located in a rural area.

''(19) SATELLITE CARRIER.—The term 'satellite carrier' means any person using the facilities of a satellite or satellite service licensed by the Federal Communications Commission and operating in the Fixed-Satellite Service under part 25 of title 47 of the Code of Federal Regulations or the Direct Broadcast Satellite Service under part 100 of title 47 of such Code to establish and operate a channel of communications for distribution of signals, and owning or leasing a capacity or service on a satellite in order to provide such distribution.

''(20) SATURATED MARKET.—The term 'saturated market' means any census tract in which, as of the date of the enactment of this section—

''(A) current generation broadband services have been provided by one or more providers to 85 percent or more of the total number of potential residential subscribers residing in dwellings located within such census tract, and

''(B) such services can be utilized—

''(i) at least a majority of the time during periods of maximum demand by each such subscriber who is utilizing such services, and

''(ii) in a manner substantially the same as such services are provided by the provider to subscribers through equipment with respect to which no credit is allowed under subsection (a)(1).

''(21) SUBSCRIBER.—The term 'subscriber' means a person who purchases current generation broadband services or next generation broadband services.

''(22) TELECOMMUNICATIONS CARRIER.—The term 'telecommunications carrier' has the meaning given such term by section 3(44) of the Communications Act of 1934 (47 U.S.C. 153(44)), but—

''(A) includes all members of an affiliated group of which a telecommunications carrier is a member, and

''(B) does not include a commercial mobile service carrier.

''(23) TOTAL POTENTIAL SUBSCRIBER POPULATION.—The term 'total potential subscriber population' means, with respect to any area and based on the most recent census data, the total number of potential residential subscribers residing in dwellings located in such area and potential nonresidential subscribers maintaining permanent places of business located in such area.

''(24) UNDERSERVED AREA.—The term 'underserved area' means any census tract which is located in—

''(A) an empowerment zone or enterprise community designated under section 1391,

''(B) the District of Columbia Enterprise Zone established under section 1400,

''(C) a renewal community designated under section 1400E, or

''(D) a low-income community designated under section 45D.

''(25) UNDERSERVED SUBSCRIBER.—The term 'underserved subscriber' means a residential subscriber residing in a dwelling located in an underserved area or nonresidential subscriber maintaining a permanent place of business located in an underserved area.''.

(b) CREDIT TO BE PART OF INVESTMENT CREDIT.—Section 46 (relating to the amount of investment credit) is amended by striking ''and'' at the end of paragraph (2), by striking the period at the end of paragraph (3) and inserting '', and'', and by adding at the end the following:

''(4) the broadband Internet access credit.''

(c) SPECIAL RULE FOR MUTUAL OR COOPERATIVE TELEPHONE COMPANIES.—Section 501(c)(12)(B) (relating to list of exempt organizations) is amended by striking ''or'' at the end of clause (iii), by striking the period at the end of clause (iv) and inserting '', or'', and by adding at the end the following new clause:

''(v) from the sale of property subject to a lease described in section 48A(c)(2)(B), but only to the extent such income does not in any year exceed an amount equal to the credit for qualified expenditures which would be determined under section 48A for such year if the mutual or cooperative telephone company was not exempt from taxation and was treated as the owner of the property subject to such lease.''.

(d) CONFORMING AMENDMENT.—The table of sections for subpart E of part IV of subchapter A of chapter 1 is amended by inserting after the item relating to section 48 the following:

''Sec. 48A. Broadband internet access credit.''.

(e) DESIGNATION OF CENSUS TRACTS.—

(1) IN GENERAL.—The Secretary of the Treasury shall, not later than 90 days after the date of the enactment of this Act, designate and publish those census tracts meeting the criteria described in paragraphs (17) and (24) of section 48A(e) of the Internal Revenue Code of 1986 (as added by this section). In making such designations, the Secretary of the Treasury shall consult with such other departments and agencies as the Secretary determines appropriate.

(2) SATURATED MARKET.—

(A) IN GENERAL.—For purposes of designating and publishing those census tracts meeting the criteria described in subsection (e)(20) of such section 48A—

(i) the Secretary of the Treasury shall prescribe not later than 30 days after the date of the enactment of this Act the form upon which any provider which takes the position that it meets such criteria with respect to any census tract shall submit a list of such census tracts (and any other information required by the Secretary) not later than 60 days after the date of the publication of such form, and

(ii) the Secretary of the Treasury shall publish an aggregate list of such census tracts submitted and the applicable providers not later than 30 days after the last date such submissions are allowed under clause (i).

(B) NO SUBSEQUENT LISTS REQUIRED.—The Secretary of the Treasury shall not be required to publish any list of census tracts meeting such criteria subsequent to the list described in subparagraph (A)(ii).

(C) PENALTIES FOR SUBMISSION OF FALSE INFORMATION.—The Secretary of the Treasury shall designate appropriate penalties for knowingly submitting false information on the form described in subparagraph (A)(i).

(f) OTHER REGULATORY MATTERS.—

(1) PROHIBITION.—No Federal or State agency or instrumentality shall adopt regulations or ratemaking procedures that would have the effect of confiscating any credit or portion thereof allowed under section 48A of the Internal Revenue Code of 1986 (as added by this section) or otherwise subverting the purpose of this section.

(2) TREASURY REGULATORY AUTHORITY.—It is the intent of Congress in providing the broadband Internet access credit under section 48A of the Internal Revenue Code of 1986 (as added by this section) to provide incentives for the purchase, installation, and connection of equipment and facilities offering expanded broadband access to the Internet for users in certain low income and rural areas of the United States, as well as to residential users nationwide, in a manner that maintains competitive neutrality among the various classes of providers of broadband services. Accordingly, the Secretary of the Treasury shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of section 48A of such Code, including—

(A) regulations to determine how and when a taxpayer that incurs qualified expenditures satisfies the requirements of section 48A of such Code to provide broadband services, and

(B) regulations describing the information, records, and data taxpayers are required to provide the Secretary to substantiate compliance with the requirements of section 48A of such Code.

(g) EFFECTIVE DATE.—The amendments made by this section shall apply to expenditures incurred after December 31, 2002, and before January 1, 2004.

## TITLE III—STATE FISCAL RELIEF

### SEC. 301. GENERAL REVENUE SHARING WITH STATES AND THEIR LOCAL GOVERNMENTS.

(a) APPROPRIATION.—There is authorized to be appropriated and is appropriated to carry out this section $15,000,000,000 for fiscal year 2003.

(b) ALLOTMENTS.—From the amount appropriated under subsection (a) for fiscal year 2003, the Secretary of the Treasury shall, as soon as practicable after the date of the enactment of this Act, allot to each of the States as follows, except that no State shall receive less than ½ of 1 percent of such amount:

(1) STATE LEVEL.—$12,000,000,000 shall be allotted among such States on the basis of the relative population of each such State, as determined by the Secretary on the basis of the most recent satisfactory data.

(2) LOCAL GOVERNMENT LEVEL.—$3,000,000,000 shall be allotted among such States as determined under paragraph (1) for distribution to the various units of general local government within such States on the basis of the relative population of each such unit within each such State, as determined by the Secretary on the basis of the most recent satisfactory data.

(c) DEFINITIONS.—For purposes of this section—

(1) STATE.—The term ''State'' means any of the several States, the District of Columbia, and the Commonwealth of Puerto Rico.

(2) UNIT OF GENERAL LOCAL GOVERNMENT.—

(A) IN GENERAL.—The term ''unit of general local government'' means—

(i) a county, parish, township, city, or political subdivision of a county, parish, township, or city, that is a unit of general local government as determined by the Secretary of Commerce for general statistical purposes; and

(ii) the District of Columbia, the Commonwealth of Puerto Rico, and the recognized governing body of an Indian tribe or Alaskan native village that carries out substantial governmental duties and powers.

(B) TREATMENT OF SUBSUMED AREAS.—For purposes of determining a unit of general local government under this section, the rules under section 6720(c) of title 31, United States Code, shall apply.

### SEC. 302. HOMELAND SECURITY.

(a) SHORT TITLE; PURPOSE.—

(1) SHORT TITLE.—This section may be cited as the ''First Responders Partnership Grant Act of 2003''.

(2) PURPOSE.—The purpose of this section is to support first responders to protect homeland security and prevent and respond to acts of terrorism.

(b) DEFINITIONS.—In this section:

(1) INDIAN TRIBE.—The term ''Indian tribe'' has the same meaning as in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)).

(2) LAW ENFORCEMENT OFFICER.—The term ''law enforcement officer'' means any officer, agent, or employee of a State, unit of local government, public or private college or university, or Indian tribe authorized by law or by a government agency to engage in or supervise the prevention, detection, or investigation of any violation of criminal law, or authorized by law to supervise sentenced criminal offenders.

(3) PUBLIC SAFETY OFFICER.—The term ''public safety officer'' means any person serving a public or private agency with or without compensation as a law enforcement officer, as a firefighter, or as a member of a rescue squad or ambulance crew.

(4) STATE.—The term ''State'' means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

(5) UNIT OF LOCAL GOVERNMENT.—The term ''unit of local government'' means a county, municipality, town, township, village, parish, borough, or other unit of general government below the State level.

(c) FIRST RESPONDERS PARTNERSHIP GRANT PROGRAM FOR PUBLIC SAFETY OFFICERS.—

(1) IN GENERAL.—The Secretary of Homeland Security (referred to in this section as the ''Secretary'') is authorized to make grants to States, units of local government, and Indian tribes to support public safety officers in their efforts to protect homeland security and prevent and respond to acts of terrorism.

(2) USE OF FUNDS.—Grants awarded under this subsection shall be—

(A) distributed directly to the State, unit of local government, or Indian tribe; and

(B) used to fund personnel expenses, equipment, training, and facilities to support public safety officers in their efforts to protect homeland security and prevent and respond to acts of terrorism.

(3) ALLOCATION AND DISTRIBUTION OF FUNDS.—

(A) SET-ASIDE FOR INDIAN TRIBES.—

(i) IN GENERAL.—The Secretary shall reserve 1 percent of the amount appropriated for grants pursuant to this Act to be used for grants to Indian tribes.

(ii) SELECTION OF INDIAN TRIBES.—

(I) IN GENERAL.—The Secretary shall award grants under this subparagraph to Indian tribes on the basis of a competition conducted pursuant to specific criteria.

(II) RULEMAKING.—The criteria under subclause (I) shall be contained in a regulation promulgated by the Attorney General after notice and public comment.

(B) SET-ASIDE FOR RURAL STATES.—

(i) IN GENERAL.—The Secretary shall reserve 5 percent of the amount appropriated for grants pursuant to this Act to be used for grants to rural States.

(ii) SELECTION OF RURAL STATES.—The Secretary shall award grants under this subparagraph to rural States (as defined in section 1501(b) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796bb(b))).

(C) MINIMUM AMOUNT.—The Secretary shall allocate, from the total amount appropriated for grants to States under this subsection—

(i) not less than 0.75 percent for each State; and

(ii) not less than 0.25 percent for American Samoa, Guam, the Northern Mariana Islands, and the United States Virgin Islands, respectively.

(D) ALLOCATION TO METROPOLITAN CITIES AND URBAN COUNTIES.—

(i) ALLOCATION PERCENTAGE.—The balance of the total amount appropriated for grants to States under this subsection after allocations have been made to Indian tribes, rural States, and the minimum amount to each State pursuant to subparagraphs (A) through (C), shall be allocated by the Secretary to metropolitan cities and urban counties.

(E) COMPUTATION OF AMOUNT ALLOCATED TO METROPOLITAN CITIES.—

(i) COMPUTATION RATIOS.—The Secretary shall determine the amount to be allocated to each metropolitan city, which shall bear the same ratio to the allocation for all metropolitan cities as the weighted average of—

(I) the population of the metropolitan city divided by the population of all metropolitan cities;

(II) the potential chemical security risk of the metropolitan city divided by the potential chemical security risk of all metropolitan cities;

(III) the proximity of the metropolitan city to the nearest operating nuclear power plant

compared to the proximity of all metropolitan cities to the nearest operating nuclear power plant to each such city;

(IV) the proximity of the metropolitan cities to the nearest United States land or water port compared with the proximity of all metropolitan cities to the nearest United States land or water port to each such city;

(V) the proximity of the metropolitan city to the nearest international border compared with the proximity of all metropolitan cities to the nearest international border to each such city; and

(VI) the proximity of the metropolitan city to the nearest Disaster Medical Assistance Team (referred to in this subsection as ''DMAT'') compared with the proximity of all metropolitan cities to the nearest DMAT to each such city.

(ii) CLARIFICATION OF COMPUTATION RATIOS.—

(I) RELATIVE WEIGHT OF FACTOR.—In determining the average of the ratios under clause (i)—

(aa) the ratio involving population shall constitute 50 percent of the formula in calculating the allocation; and

(bb) the remaining factors shall be equally weighted.

(II) POTENTIAL CHEMICAL SECURITY RISK.—If a metropolitan city is within the vulnerable zone of a worst-case chemical release (as specified in the most recent risk management plans filed with the Environmental Protection Agency, or another instrument developed by the Environmental Protection Agency or the Homeland Security Department that captures the same information for the same facilities), the ratio under clause (i)(II) shall be 1 divided by the total number of metropolitan cities that are within such a zone.

(III) PROXIMITY AS IT PERTAINS TO NUCLEAR SECURITY.—If a metropolitan city is located within 50 miles of an operating nuclear power plant (as identified by the Nuclear Regulatory Commission), the ratio under clause (i)(III) shall be 1 divided by the total number of metropolitan cities, not to exceed 100, which are located within 50 miles of an operating nuclear power plant.

(IV) PROXIMITY AS IT PERTAINS TO PORT SECURITY.—If a metropolitan city is located within 50 miles of 1 of the 100 largest United States ports (as stated by the Department of Transportation, Bureau of Transportation Statistics, United States Port Report by All Land Modes), or within 50 miles of 1 of the 30 largest United States water ports by metric tons and value (as stated by the Department of Transportation, Maritime Administration, United States Foreign Waterborne Transportation Statistics), the ratio under clause (i)(IV) shall be 1 divided by the total number of metropolitan cities that are located within 50 miles of a United States land or water port.

(V) PROXIMITY TO INTERNATIONAL BORDER.—If a metropolitan city is located within 50 miles of an international border, the ratio under clause (i)(V) shall be 1 divided by the total number of metropolitan cities that are located within 50 miles of an international border.

(VI) PROXIMITY TO DISASTER MEDICAL ASSISTANCE TEAM.—If a metropolitan city is located within 50 miles of a DMAT, as organized by the National Disaster Medical System, the ratio under clause (i)(VI) shall be 1 divided by the total number of metropolitan cities that are located within 50 miles of a DMAT.

(F) COMPUTATION OF AMOUNT ALLOCATED TO URBAN COUNTIES.—

(i) COMPUTATION RATIOS.—The Secretary shall determine the amount to be allocated to each urban county, which shall bear the same ratio to the allocation for all urban counties as the weighted average of—

(I) the population of the urban county divided by the population of all urban counties;

(II) the potential chemical security risk of the urban county divided by the potential chemical security risk of all urban counties;

(III) the proximity of the urban county to the nearest operating nuclear power plant compared to the proximity of all urban counties to the nearest operating nuclear power plant to each such city;

(IV) the proximity of the urban counties to the nearest United States land or water port compared with the proximity of all urban counties to the nearest United States land or water port to each such city;

(V) the proximity of the urban county to the nearest international border compared with the proximity of all urban counties to the nearest international border to each such city; and

(VI) the proximity of the urban county to the nearest Disaster Medical Assistance Team (referred to in this subsection as ''DMAT'') compared with the proximity of all urban counties to the nearest DMAT to each such city.

(ii) CLARIFICATION OF COMPUTATION RATIOS.—

(I) RELATIVE WEIGHT OF FACTOR.—In determining the average of the ratios under clause (i)—

(aa) the ratio involving population shall constitute 50 percent of the formula in calculating the allocation; and

(bb) the remaining factors shall be equally weighted.

(II) POTENTIAL CHEMICAL SECURITY RISK.—If an urban county is within the vulnerable zone of a worst-case chemical release (as specified in the most recent risk management plans filed with the Environmental Protection Agency, or another instrument developed by the Environmental Protection Agency or the Homeland Security Department that captures the same information for the same facilities), the ratio under clause (i)(II) shall be 1 divided by the total number of urban counties that are within such a zone.

(III) PROXIMITY AS IT PERTAINS TO NUCLEAR SECURITY.—If an urban county is located within 50 miles of an operating nuclear power plant (as identified by the Nuclear Regulatory Commission), the ratio under clause (i)(III) shall be 1 divided by the total number of urban counties, not to exceed 100, which are located within 50 miles of an operating nuclear power plant.

(IV) PROXIMITY AS IT PERTAINS TO PORT SECURITY.—If an urban county is located within 50 miles of 1 of the 100 largest United States ports (as stated by the Department of Transportation, Bureau of Transportation Statistics, United States Port Report by All Land Modes), or within 50 miles of 1 of the 30 largest United States water ports by metric tons and value (as stated by the Department of Transportation, Maritime Administration, United States Foreign Waterborne Transportation Statistics), the ratio under clause (i)(IV) shall be 1 divided by the total number of urban counties that are located within 50 miles of a United States land or water port.

(V) PROXIMITY TO INTERNATIONAL BORDER.—If an urban county is located within 50 miles of an international border, the ratio under clause (i)(V) shall be 1 divided by the total number of urban counties that are located within 50 miles of an international border.

(VI) PROXIMITY TO DISASTER MEDICAL ASSISTANCE TEAM.—If an urban county is located within 50 miles of a DMAT, as organized by the National Disaster Medical System, the ratio under clause (i)(VI) shall be 1 divided by the total number of urban counties that are located within 50 miles of a DMAT.

(G) EXCLUSIONS.—

(i) IN GENERAL.—In computing amounts or exclusions under subparagraph (F) with respect to any urban county, units of general local government located in the county shall be excluded if the populations of such units are not counted to determine the eligibility of the urban county to receive a grant under this subsection.

(ii) INDEPENDENT CITIES.—

(I) IN GENERAL.—In computing amounts under clause (i), there shall be included any independent city (as defined by the Bureau of the Census) which—

(aa) is not part of any county;

(bb) is not eligible for a grant;

(cc) is contiguous to the urban county;

(dd) has entered into cooperation agreements with the urban county which provide that the urban county is to undertake or to assist in the undertaking of essential community development and housing assistance activities with respect to such independent city; and

(ee) is not included as a part of any other unit of general local government for purposes of this subsection.

(II) LIMITATION.—Any independent city that is included in the computation under this clause (i) shall not be eligible to receive assistance under this subsection for the fiscal year for which such computation is used to allocate such assistance.

(H) INCLUSION.—

(i) LOCAL GOVERNMENT STRADDLING COUNTY LINE.—In computing amounts or exclusions under subparagraph (F) with respect to any urban county, all of the area of any unit of local government shall be included, which is part of, but is not located entirely within the boundaries of, such urban county if—

(I) the part of such unit of local government that is within the boundaries of such urban county would otherwise be included in computing the amount for such urban county under this paragraph; and

(II) the part of such unit of local government that is not within the boundaries of such urban county is not included as a part of any other unit of local government for the purpose of this paragraph.

(ii) USE OF GRANT FUNDS OUTSIDE URBAN COUNTY.—Any amount received under this subsection by an urban county described under clause (i) may be used with respect to the part of such unit of local government that is outside the boundaries of such urban county.

(I) POPULATION.—

(i) EFFECT OF CONSOLIDATION.—Where data are available, the amount to be allocated to a metropolitan city that has been formed by the consolidation of 1 or more metropolitan cities within an urban county shall be equal to the sum of the amounts that would have been allocated to the urban county or cities and the balance of the consolidated government if such consolidation had not occurred.

(ii) LIMITATION.—Clause (i) shall apply only to a consolidation that—

(I) included all metropolitan cities that received grants under this subsection for the fiscal year preceding such consolidation and that were located within the urban county;

(II) included the entire urban county that received a grant under this subsection for the fiscal year preceding such consolidation; and

(III) took place on or after January 1, 2003

(iii) GROWTH RATE.—The population growth rate of all metropolitan cities defined in this subsection shall be based on the population of—

(I) metropolitan cities other than consolidated governments the grant for which is determined under this paragraph; and

(II) cities that were metropolitan cities before their incorporation into consolidated governments.

(4) MAXIMUM AMOUNT PER GRANTEE.—

(A) IN GENERAL.—A qualifying State, unit of local government, or Indian tribe may not receive more than 5 percent of the total amount appropriated for grants under this section.

(B) AGGREGATE AMOUNT PER STATE.—A State, together with the grantees within the State may not receive more than 20 percent of the total amount appropriated for grants under this section.

(5) MATCHING FUNDS.—

(A) IN GENERAL.—The portion of the costs of a program provided by a grant under paragraph (1) may not exceed 90 percent.

(B) WAIVER.—If the Secretary determines that a grantee is experiencing fiscal hardship, the Secretary may waive, in whole or in part, the matching requirement under subparagraph (A).

(C) EXCEPTION.—Any funds appropriated by Congress for the activities of any agency of an Indian tribal government or the Bureau of Indian Affairs performing law enforcement functions on any Indian lands may be used to provide the non-Federal share of a matching requirement under subparagraph (A).

(d) APPLICATIONS.—

(1) IN GENERAL.—To request a grant under this section, the chief executive of a State, unit of local government, or Indian tribe shall submit an application to the Secretary of the Bureau of Justice Assistance in such form and containing such information as the Secretary may reasonably require.

(2) REGULATIONS.—Not later than 90 days after the date of enactment of this Act, the Attorney General shall promulgate regulations to implement this section (including the information that must be included and the requirements that the States, units of local government, and Indian tribes must meet) in submitting the applications required under this section.

(e) AUTHORIZATION AND APPROPRIATIONS.—There are authorized to be appropriated and are appropriated $5,000,000,000 for fiscal year 2003 to carry out this section.

**SEC. 303. FUNDING FOR EDUCATION.**

(a) BASIC PROGRAMS OPERATED BY LOCAL EDUCATIONAL AGENCIES.—In addition to amounts appropriated under the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2003, the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending September 30, 2003, for carrying out part A of title I of the Elementary and Secondary Education Act of 1965, $4,250,000,000. The Secretary of Education shall reserve 1 percent of such amount for the Secretary of the Interior for programs under part B of title I of such Act in schools operated or funded by the Bureau of Indian Affairs.

(b) HIGH QUALITY TEACHERS AND PRINCIPALS.—In addition to amounts appropriated under the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2003, the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending September 30, 2003, for carrying out part A of title II (other than subpart 5) of the Elementary and Secondary Education Act of 1965, $550,000,000. The Secretary of Education shall reserve 1 percent of such amount for the Secretary of the Interior for programs under such part A in schools operated or funded by the Bureau of Indian Affairs.

(c) LANGUAGE INSTRUCTION FOR LIMITED ENGLISH PROFICIENT AND IMMIGRANT STUDENTS.—In addition to amounts appropriated under the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2003, the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending September 30, 2003, for carrying out title III (other than subpart 4 of part B) of the Elementary and Secondary Education Act of 1965, $410,000,000. The Secretary of Education shall reserve 1 percent of such amount for payment of entities under section 3112(a) of such Act.

(d) 21ST CENTURY COMMUNITY LEARNING CENTERS.—In addition to amounts appropriated under the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2003, the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending September 30, 2003, for carrying out part B of title IV of the Elementary and Secondary Education Act of 1965, $500,000,000.The Secretary of Education shall reserve 1 percent of such amount for payments to the Bureau of Indian Affairs to enable the Bureau to carry out the purposes of such part B.

(e) RURAL EDUCATION INITIATIVE.—In addition to amounts appropriated under the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2003, the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending September 30, 2003, for carrying out part B of title VI of the Elementary and Secondary Education Act of 1965, $131,000,000.

(f) STUDENT FINANCIAL ASSISTANCE.—

(1) IN GENERAL.—In addition to amounts appropriated under the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2003, the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending September 30, 2003, for carrying out subpart 1 of part A of title IV of the Higher Education Act of 1965, $200,000,000.

(2) MAXIMUM PELL GRANT.—The maximum Pell Grant for which a student shall be eligible during award year 2003–2004 shall be $4,100.

**SEC. 304. TEMPORARY STATE FMAP RELIEF.**

(a) PERMITTING MAINTENANCE OF FISCAL YEAR 2002 FMAP FOR LAST 3 CALENDAR QUARTERS OF FISCAL YEAR 2003.—Notwithstanding any other provision of law, but subject to subsection (e), if the FMAP determined without regard to this subsection for a State for fiscal year 2003 is less than the FMAP as so determined for fiscal year 2002, the FMAP for the State for fiscal year 2002 shall be substituted for the State's FMAP for the second, third, and fourth calendar quarters of fiscal year 2003, before the application of this section.

(b) PERMITTING MAINTENANCE OF FISCAL YEAR 2003 FMAP FOR FIRST CALENDAR QUARTER OF FISCAL YEAR 2004.—Notwithstanding any other provision of law, but subject to subsection (e), if the FMAP determined without regard to this subsection for a State for fiscal year 2004 is less than the FMAP as so determined for fiscal year 2003, the FMAP for the State for fiscal year 2003 shall be substituted for the State's FMAP for the first calendar quarter of fiscal year 2004, before the application of this section.

(c) GENERAL 3.76 PERCENTAGE POINTS INCREASE FOR LAST 3 CALENDAR QUARTERS OF FISCAL YEAR 2003 AND FIRST CALENDAR QUARTER OF FISCAL YEAR 2004.—Notwithstanding any other provision of law, but subject to subsections (e) and (f), for each State for the second, third, and fourth calendar quarters of fiscal year 2003 and the first calendar quarter of fiscal year 2004, the FMAP (taking into account the application of subsections (a) and (b)) shall be increased by 3.76 percentage points.

(d) INCREASE IN CAP ON MEDICAID PAYMENTS TO TERRITORIES.—Notwithstanding any other provision of law, but subject to subsection (f), with respect to the second, third, and fourth calendar quarters of fiscal year 2003 and the first calendar quarter of fiscal year 2004, the amounts otherwise determined for Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa under subsections (f) and (g) of section 1108 of the Social Security Act (42 U.S.C. 1308) shall each be increased by an amount equal to 7.52 percent of such amounts.

(e) SCOPE OF APPLICATION.—The increases in the FMAP for a State under this section shall apply only for purposes of title XIX of the Social Security Act and shall not apply with respect to—

(1) disproportionate share hospital payments described in section 1923 of such Act (42 U.S.C. 1396r–4);

(2) payments under title IV or XXI of such Act (42 U.S.C. 601 et seq. and 1397aa et seq.); or

(3) the percentage described in the third sentence of section 1905(b) of the Social Security Act (42 U.S.C. 1396d(b)) (relating to amounts expended as medical assistance for services received through an Indian Health Service facility whether operated by the Indian Health Service or by an Indian tribe or tribal organization (as defined in section 4 of the Indian Health Care Improvement Act)).

(f) STATE ELIGIBILITY.—

(1) IN GENERAL.—Subject to paragraph (2), a State is eligible for an increase in its FMAP under subsection (c) or an increase in a cap amount under subsection (d) only if the eligibility under its State plan under title XIX of the Social Security Act (including any waiver under such title or under section 1115 of such Act (42 U.S.C. 1315)) is no more restrictive than the eligibility under such plan (or waiver) as in effect on July 1, 2003.

(2) STATE REINSTATEMENT OF ELIGIBILITY PERMITTED.—A State that has restricted eligibility under its State plan under title XIX of the Social Security Act (including any waiver under such title or under section 1115 of such Act (42 U.S.C. 1315)) after July 1, 2003, but prior to the date of enactment of this Act is eligible for an increase in its FMAP under subsection (c) or an increase in a cap amount under subsection (d) in the first calendar quarter (and any subsequent calendar quarters) in which the State has reinstated eligibility that is no more restrictive than the eligibility under such plan (or waiver) as in effect on July 1, 2003.

(3) RULE OF CONSTRUCTION.—Nothing in paragraph (1) or (2) shall be construed as affecting a State's flexibility with respect to benefits offered under the State medicaid program under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) (including any waiver under such title or under section 1115 of such Act (42 U.S.C. 1315)).

(g) DEFINITIONS.—In this section:

(1) FMAP.—The term ''FMAP'' means the Federal medical assistance percentage, as defined in section 1905(b) of the Social Security Act (42 U.S.C. 1396d(b)).

(2) STATE.—The term ''State'' has the meaning given such term for purposes of title XIX of the Social Security Act (42 U.S.C. 1396 et seq.).

(h) REPEAL.—Effective as of January 1, 2004, this section is repealed.

**SEC. 305. FUNDING FOR TRANSPORTATION INFRASTRUCTURE.**

(a) HIGHWAY PROGRAMS.—

(1) APPROPRIATIONS.—Subject to subsection (d), in addition to amounts appropriated

under the Department of Transportation and Related Agencies Appropriations Act, 2003, there are appropriated to the Secretary of Transportation, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending September 30, 2003—

(A) $2,480,000,000—

(i) to be apportioned among the States in accordance with the formula specified in section 104(b)(3) of title 23, United States Code; and

(ii) to be used for projects eligible under section 133 of that title, without regard to section 133(d) of that title;

(B) $80,000,000, to be used by the Secretary in the same manner as funds are used under section 118(c) of that title, except that section 118(c)(2)(A) of that title shall not apply to funds appropriated under this subparagraph;

(C) $80,000,000, to be used by the Secretary in the same manner as funds are used under section 144(g)(2) of that title;

(D) $80,000,000, to be used by the Secretary in the same manner as funds are used under subsections (a) through (c) and (e) of section 202 of that title;

(E) $80,000,000, to be used by the Secretary in the same manner as funds are used under section 202(d) of that title; and

(F) $80,000,000, to be used by the Secretary in the same manner as funds are used under sections 1118 and 1119 of the Transportation Equity Act for the 21st Century (23 U.S.C. 101 note; 112 Stat. 161).

(2) REDISTRIBUTION OF UNUSED OBLIGATION AUTHORITY.—Funds made available under paragraph (1)(A) that are not obligated within 180 days after the date of enactment of this Act shall be redistributed in the manner described in section 1102(d) of the Transportation Equity Act for the 21st Century (23 U.S.C. 104 note; 112 Stat. 117).

(b) TRANSIT PROGRAM.—

(1) APPROPRIATIONS.—Subject to subsection (d)(1), in addition to amounts appropriated under the Department of Transportation and Related Agencies Appropriations Act, 2003, there are appropriated to the Secretary of Transportation, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending September 30, 2003, $720,000,000—

(A) to be distributed between and used for projects eligible under sections 5307 and 5311 of title 49, United States Code, in the same ratio as funds were distributed under section 5338 of that title for fiscal years 1998 through 2003; and

(B) to be apportioned among the States in accordance with the formulas specified in sections 5307 and 5311 of title 49, United States Code.

(2) REDISTRIBUTION OF UNUSED OBLIGATION AUTHORITY.—Funds made available under paragraph (1) that are not obligated within 180 days after the date of enactment of this Act shall be redistributed among the States giving priority to those States having large unobligated balances of funds apportioned under sections 5307 and 5311 of title 49, United States Code.

(c) AIRPORT PROGRAMS.—Subject to subsection (d), in addition to any amounts appropriated for fiscal year 2003, there is appropriated $400,000,000 out of any money in the Treasury not otherwise appropriated for the fiscal year ending September 30, 2003, to the Secretary of Transportation as discretionary funds to be used by the Secretary for grants to make safety and security improvements at airports in the same manner as funds are used under subtitle VII of title 49, United States Code, except that none of the funds may be used to expedite a letter of intent in effect on the date of enactment of this Act.

(d) GENERAL PROVISIONS.—Notwithstanding any other provision of law—

(1) the Federal share of the cost of a project carried out with funds made available under this section shall be 100 percent; and

(2) funds made available under subparagraphs (B) through (F) of subsection (a)(1) and under subsection (c) shall be—

(A) obligated not later than 180 days after the date of enactment of this Act; and

(B) expended as expeditiously as practicable.

## TITLE IV—UNEMPLOYMENT ASSISTANCE

### Subtitle A—Additional Weeks of Temporary Extended Unemployment Compensation

#### SEC. 401. ENTITLEMENT TO ADDITIONAL WEEKS OF TEMPORARY EXTENDED UNEMPLOYMENT COMPENSATION.

(a) ENTITLEMENT TO ADDITIONAL WEEKS.—

(1) IN GENERAL.—Paragraph (1) of section 203(b) of the Temporary Extended Unemployment Compensation Act of 2002 (Public Law 107–147; 116 Stat. 28) is amended—

(A) in subparagraph (A), by striking ''50 percent'' and inserting ''100 percent''; and

(B) in subparagraph (B), by striking ''13 times'' and inserting ''26 times''.

(2) REPEAL OF RESTRICTION ON AUGMENTATION DURING TRANSITIONAL PERIOD.—Section 208(b) of the Temporary Extended Unemployment Compensation Act of 2002 (Public Law 107–147), as amended by Public Law 108–1 (117 Stat. 3), is amended—

(A) in paragraph (1)—

(i) by striking ''paragraphs (2) and (3)'' and inserting ''paragraph (2)''; and

(ii) by inserting before the period at the end the following: '', including such compensation by reason of amounts deposited in such account after such date pursuant to the application of subsection (c) of such section'';

(B) by striking paragraph (2); and

(C) by redesignating paragraph (3) as paragraph (2).

(3) EXTENSION OF TRANSITION LIMITATION.—Section 208(b)(2) of the Temporary Extended Unemployment Compensation Act of 2002 (Public Law 107–147), as amended by Public Law 108–1 (117 Stat. 3) and as redesignated by paragraph (2), is amended by striking ''August 30, 2003'' and inserting ''December 31, 2003''.

(4) CONFORMING AMENDMENT FOR AUGMENTED BENEFITS.—Section 203(c)(1) of the Temporary Extended Unemployment Compensation Act of 2002 (Public Law 107–147; 116 Stat. 28) is amended by striking ''the amount originally established in such account (as determined under subsection (b)(1))'' and inserting ''7 times the individual's average weekly benefit amount for the benefit year''.

(b) EFFECTIVE DATE AND APPLICATION.—

(1) IN GENERAL.—The amendments made by subsection (a) shall apply with respect to weeks of unemployment beginning on or after the date of enactment this Act.

(2) TEUC–X AMOUNTS DEPOSITED IN ACCOUNT PRIOR TO DATE OF ENACTMENT DEEMED TO BE THE ADDITIONAL TEUC AMOUNTS PROVIDED BY THIS SECTION.—In applying the amendments made by subsection (a) under the Temporary Extended Unemployment Compensation Act of 2002 (Public Law 107–147; 116 Stat. 26), the Secretary of Labor shall deem any amounts deposited into an individual's temporary extended unemployment compensation account by reason of section 203(c) of such Act (commonly known as ''TEUC–X amounts'') prior to the date of enactment of this Act to be amounts deposited in such account by reason of section 203(b) of such Act, as amended by subsection (a) (commonly known as ''TEUC amounts'').

(3) APPLICATION TO EXHAUSTEES AND CURRENT BENEFICIARIES.—

(A) EXHAUSTEES.—In the case of any individual—

(i) to whom any temporary extended unemployment compensation was payable for any week beginning before the date of enactment of this Act; and

(ii) who exhausted such individual's rights to such compensation (by reason of the payment of all amounts in such individual's temporary extended unemployment compensation account) before such date,

such individual's eligibility for any additional weeks of temporary extended unemployment compensation by reason of the amendments made by subsection (a) shall apply with respect to weeks of unemployment beginning on or after the date of enactment of this Act.

(B) CURRENT BENEFICIARIES.—In the case of any individual—

(i) to whom any temporary extended unemployment compensation was payable for any week beginning before the date of enactment of this Act; and

(ii) as to whom the condition described in subparagraph (A)(ii) does not apply,

such individual shall be eligible for temporary extended unemployment compensation (in accordance with the provisions of the Temporary Extended Unemployment Compensation Act of 2002, as amended by subsection (a)) with respect to weeks of unemployment beginning on or after the date of enactment of this Act.

(4) REDETERMINATION OF ELIGIBILITY FOR AUGMENTED AMOUNTS FOR INDIVIDUALS FOR WHOM SUCH A DETERMINATION WAS MADE PRIOR TO THE DATE OF ENACTMENT.—Any determination of whether the individual's State is in an extended benefit period under section 203(c) of the Temporary Extended Unemployment Compensation Act of 2002 (Public Law 107–147; 116 Stat. 28) made prior to the date of enactment of this Act shall be disregarded and the determination under such section shall be made as follows:

(A) INDIVIDUALS WHO EXHAUSTED 13 TEUC AND 13 TEUX–X WEEKS PRIOR TO THE DATE OF ENACTMENT.—In the case of an individual who, prior to the date of enactment of this Act, received 26 times the individual's average weekly benefit amount through an account established under section 203 of the Temporary Extended Unemployment Compensation Act of 2002 (Public Law 107–147; 116 Stat. 28) (by reason of augmentation under subsection (c) of such section), the determination shall be made as of the date of enactment of this Act.

(B) ALL OTHER INDIVIDUALS.—In the case of an individual who is not described in subparagraph (A), the determination shall be made at the time that the individual's account established under such section 203, as amended by subsection (a), is exhausted.

### Subtitle B—Temporary Enhanced Regular Unemployment Compensation

#### SEC. 411. FEDERAL-STATE AGREEMENTS.

(a) IN GENERAL.—Any State which desires to do so may enter into and participate in an agreement under this title with the Secretary of Labor (in this title referred to as the ''Secretary''). Any State which is a party to an agreement under this title may, upon providing 30 days' written notice to the Secretary, terminate such agreement.

(b) PROVISIONS OF AGREEMENT.—

(1) IN GENERAL.—Subject to paragraph (3), any agreement under subsection (a) shall provide that the State agency of the State, in addition to any amounts of regular compensation to which an individual may be entitled under the State law, shall make payments of temporary enhanced regular unemployment compensation to an individual in an amount and to the extent that the individual would be entitled to regular compensation if the State law were applied with the modifications described in paragraph (2).

(2) MODIFICATIONS DESCRIBED.—The modifications described in this paragraph are as follows:

(A) In the case of an individual who is not eligible for regular compensation under the State law because of the use of a definition of base period that does not count wages earned in the most recently completed calendar quarter, then eligibility for compensation shall be determined by applying a base period ending at the close of the most recently completed calendar quarter.

(B) In the case of an individual who is not eligible for regular compensation under the State law because such individual does not meet requirements relating to availability for work, active search for work, or refusal to accept work, because such individual is seeking, or is available for, less than full-time work, then compensation shall not be denied by such State to an otherwise eligible individual who seeks less than full-time work or fails to accept full-time work.

(3) REDUCTION OF AMOUNTS OF REGULAR COMPENSATION AVAILABLE FOR INDIVIDUALS WHO SOUGHT PART-TIME WORK OR FAILED TO ACCEPT FULL-TIME WORK.—Any agreement under subsection (a) shall provide that the State agency of the State shall reduce the amount of regular compensation available to an individual who has received temporary enhanced regular unemployment compensation as a result of the application of the modification described in paragraph (2)(B) by the amount of such temporary enhanced regular unemployment compensation.

(c) COORDINATION RULE.—The modifications described in subsection (b)(2) shall also apply in determining the amount of benefits payable under any Federal law to the extent that those benefits are determined by reference to regular compensation payable under the State law of the State involved.

**SEC. 412. PAYMENTS TO STATES HAVING AGREEMENTS UNDER THIS TITLE.**

(a) GENERAL RULE.—There shall be paid to each State which has entered into an agreement under this title an amount equal to—

(1) 100 percent of any temporary enhanced regular unemployment compensation; and

(2) 100 percent of any regular compensation which is paid to individuals by such State by reason of the fact that its State law contains provisions comparable to the modifications described in subparagraphs (A) and (B) of section 411(b)(2), but only to the extent that those amounts would, if such amounts were instead payable by virtue of the State law's being deemed to be so modified pursuant to section 411(b)(1), have been reimbursable under paragraph (1).

(b) DETERMINATION OF AMOUNT.—Sums under subsection (a) payable to any State by reason of such State having an agreement under this title shall be payable, either in advance or by way of reimbursement (as may be determined by the Secretary), in such amounts as the Secretary estimates the State will be entitled to receive under this title for each calendar month, reduced or increased, as the case may be, by any amount by which the Secretary finds that the Secretary's estimates for any prior calendar month were greater or less than the amounts which should have been paid to the State. Such estimates may be made on the basis of such statistical, sampling, or other method as may be agreed upon by the Secretary and the State agency of the State involved.

**SEC. 413. FINANCING PROVISIONS.**

(a) IN GENERAL.—Funds in the extended unemployment compensation account (as established by section 905(a) of the Social Security Act (42 U.S.C. 1105(a))), and the Federal unemployment account (as established by section 904(g) of such Act (42 U.S.C. 1104(g))), of the Unemployment Trust Fund (as established by section 904(a) of such Act (42 U.S.C. 1104(a))) shall be used for the making of payments to States having agreements entered into under this title.

(b) CERTIFICATION.—The Secretary shall from time to time certify to the Secretary of the Treasury for payment to each State the sums which are payable to such State under this title. The Secretary of the Treasury, prior to audit or settlement by the General Accounting Office, shall make payments to the State in accordance with such certification by transfers from the extended unemployment compensation account (as so established), or, to the extent that there are insufficient funds in that account, from the Federal unemployment account, to the account of such State in the Unemployment Trust Fund (as so established).

(c) ASSISTANCE TO STATES.—There are appropriated out of the employment security administration account of the Unemployment Trust Fund (as established by section 901(a) of the Social Security Act (42 U.S.C. 1101(a))) $500,000,000 to reimburse States for the costs of the administration of agreements under this title (including any improvements in technology in connection therewith) and to provide reemployment services to unemployment compensation claimants in States having agreements under this title. Each State's share of the amount appropriated by the preceding sentence shall be determined by the Secretary according to the factors described in section 302(a) of the Social Security Act (42 U.S.C. 502(a)) and certified by the Secretary to the Secretary of the Treasury.

(d) APPROPRIATIONS FOR CERTAIN PAYMENTS.—There are appropriated from the general fund of the Treasury, without fiscal year limitation, to the extended unemployment compensation account (as so established) of the Unemployment Trust Fund (as so established) such sums as the Secretary estimates to be necessary to make the payments under this section in respect of—

(1) compensation payable under chapter 85 of title 5, United States Code; and

(2) compensation payable on the basis of services to which section 3309(a)(1) of the Internal Revenue Code of 1986 applies.

Amounts appropriated pursuant to the preceding sentence shall not be required to be repaid.

**SEC. 414. DEFINITIONS.**

For purposes of this title, the terms ''compensation'', ''base period'', ''regular compensation'', ''State'', ''State agency'', ''State law'', and ''week'' have the respective meanings given such terms under section 205 of the Federal-State Extended Unemployment Compensation Act of 1970.

**SEC. 415. APPLICABILITY.**

(a) IN GENERAL.—Except as provided in subsection (b), an agreement entered into under this title shall apply to weeks of unemployment—

(1) beginning after the date on which such agreement is entered into; and

(2) ending before July 1, 2004.

(b) PHASE-OUT OF TERUC.—

(1) IN GENERAL.—Subject to paragraph (2), in the case of an individual who has established eligibility for temporary enhanced regular unemployment compensation, but who has not exhausted all rights to such compensation, as of the last day of the week ending before July 1, 2004, such compensation shall continue to be payable to such individual for any week beginning after such date for which the individual meets the eligibility requirements of this title.

(2) LIMITATION.—No compensation shall be payable by reason of paragraph (1) for any week beginning after December 31, 2004.

**SEC. 416. COORDINATION WITH THE TEMPORARY EXTENDED UNEMPLOYMENT COMPENSATION ACT OF 2002.**

(a) IN GENERAL.—The Temporary Extended Unemployment Compensation Act of 2002 (Public Law 107–147; 116 Stat. 30) is amended—

(1) in section 202(b)(1), by inserting '', and who have exhausted all rights to temporary enhanced regular unemployment compensation'' before the semicolon at the end;

(2) in section 202(b)(2), by inserting '', temporary enhanced regular unemployment compensation,'' after ''regular compensation'';

(3) in section 202(c), by inserting ''(or, as the case may be, such individual's rights to temporary enhanced regular unemployment compensation)'' after ''State law'' in the matter preceding paragraph (1);

(4) in section 202(c)(1), by inserting ''and no payments of temporary enhanced regular unemployment compensation can be made'' after ''under such law'';

(5) in section 202(d)(1), by inserting ''or the amount of any temporary enhanced regular unemployment compensation (including dependents' allowances) payable to such individual for such a week,'' after ''total unemployment'';

(6) in section 202(d)(2)(A), by inserting '', or, as the case may be, to temporary enhanced regular unemployment compensation,'' after ''State law'';

(7) in section 203(b)(1)(A), by inserting ''plus the amount of any temporary enhanced regular unemployment compensation payable to such individual for such week,'' after ''under such law''; and

(8) in section 203(b)(2), by inserting ''or the amount of any temporary enhanced regular unemployment compensation payable to such individual for such week,'' after ''total unemployment''.

(b) AMOUNT OF TEUC OFFSET BY AMOUNT OF TERUC.—Section 203(b)(1) of the Temporary Extended Unemployment Compensation Act of 2002 (Public Law 107–147; 116 Stat. 28) is amended—

(1) in subparagraph (B), by striking the period at the end and inserting a comma; and

(2) by adding at the end the following:

''minus the number of weeks in which the individual was entitled to temporary enhanced regular unemployment compensation as a result of the application of the modification described in section 411(b)(2)(A) of the Economic Recovery Act of 2003 (relating to the alternative base period) multiplied by the individual's average weekly benefit amount for the benefit year.''.

(c) TEMPORARY ENHANCED REGULAR UNEMPLOYMENT COMPENSATION DEFINED.—Section 207 of the Temporary Extended Unemployment Compensation Act of 2002 (Public Law 107–147; 116 Stat. 30) is amended to read as follows:

**''SEC. 207. DEFINITIONS.**

''In this title:

''(1) GENERAL DEFINITIONS.—The terms 'compensation', 'regular compensation', 'extended compensation', 'additional compensation', 'benefit year', 'base period', 'State', 'State agency', 'State law', and 'week' have the respective meanings given such terms under section 205 of the Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note).

''(2) TEMPORARY ENHANCED REGULAR UNEMPLOYMENT COMPENSATION.—The term 'temporary enhanced regular unemployment compensation' means temporary enhanced regular unemployment benefits payable under title IV of the Economic Recovery Act of 2003.''.

## TITLE V—LONG-TERM FISCAL DISCIPLINE

### Subtitle A—Provisions Designed To Curtail Tax Shelters

**SEC. 501. CLARIFICATION OF ECONOMIC SUBSTANCE DOCTRINE.**

(a) IN GENERAL.—Section 7701 is amended by redesignating subsection (m) as subsection (n) and by inserting after subsection (l) the following new subsection:

''(m) CLARIFICATION OF ECONOMIC SUBSTANCE DOCTRINE; ETC.—

''(1) GENERAL RULES.—

''(A) IN GENERAL.—In applying the economic substance doctrine, the determination of whether a transaction has economic substance shall be made as provided in this paragraph.

''(B) DEFINITION OF ECONOMIC SUBSTANCE.—For purposes of subparagraph (A)—

''(i) IN GENERAL.—A transaction has economic substance only if—

''(I) the transaction changes in a meaningful way (apart from Federal tax effects and, if there is any Federal tax effects, also apart from any foreign, State, or local tax effects) the taxpayer's economic position, and

''(II) the taxpayer has a substantial nontax purpose for entering into such transaction and the transaction is a reasonable means of accomplishing such purpose.

''(ii) SPECIAL RULE WHERE TAXPAYER RELIES ON PROFIT POTENTIAL.—A transaction shall not be treated as having economic substance by reason of having a potential for profit unless—

''(I) the present value of the reasonably expected pre-tax profit from the transaction is substantial in relation to the present value of the expected net tax benefits that would be allowed if the transaction were respected, and

''(II) the reasonably expected pre-tax profit from the transaction exceeds a risk-free rate of return.

''(C) TREATMENT OF FEES AND FOREIGN TAXES.—Fees and other transaction expenses and foreign taxes shall be taken into account as expenses in determining pre-tax profit under subparagraph (B)(ii).

''(2) SPECIAL RULES FOR TRANSACTIONS WITH TAX-INDIFFERENT PARTIES.—

''(A) SPECIAL RULES FOR FINANCING TRANSACTIONS.—The form of a transaction which is in substance the borrowing of money or the acquisition of financial capital directly or indirectly from a tax-indifferent party shall not be respected if the present value of the deductions to be claimed with respect to the transaction is substantially in excess of the present value of the anticipated economic returns of the person lending the money or providing the financial capital. A public offering shall be treated as a borrowing, or an acquisition of financial capital, from a tax-indifferent party if it is reasonably expected that at least 50 percent of the offering will be placed with tax-indifferent parties.

''(B) ARTIFICIAL INCOME SHIFTING AND BASIS ADJUSTMENTS.—The form of a transaction with a tax-indifferent party shall not be respected if—

''(i) it results in an allocation of income or gain to the tax-indifferent party in excess of such party's economic income or gain, or

''(ii) it results in a basis adjustment or shifting of basis on account of overstating the income or gain of the tax-indifferent party.

''(3) DEFINITIONS AND SPECIAL RULES.—For purposes of this subsection—

''(A) ECONOMIC SUBSTANCE DOCTRINE.—The term 'economic substance doctrine' means the common law doctrine under which tax benefits under subtitle A with respect to a transaction are not allowable if the transaction does not have economic substance or lacks a business purpose.

''(B) TAX-INDIFFERENT PARTY.—The term 'tax-indifferent party' means any person or entity not subject to tax imposed by subtitle A. A person shall be treated as a tax-indifferent party with respect to a transaction if the items taken into account with respect to the transaction have no substantial impact on such person's liability under subtitle A.

''(C) EXCEPTION FOR PERSONAL TRANSACTIONS OF INDIVIDUALS.—In the case of an individual, this subsection shall apply only to transactions entered into in connection with a trade or business or an activity engaged in for the production of income.

''(D) TREATMENT OF LESSORS.—In applying subclause (I) of paragraph (1)(B)(ii) to the lessor of tangible property subject to a lease, the expected net tax benefits shall not include the benefits of depreciation, or any tax credit, with respect to the leased property and subclause (II) of paragraph (1)(B)(ii) shall be disregarded in determining whether any of such benefits are allowable.

''(4) OTHER COMMON LAW DOCTRINES NOT AFFECTED.—Except as specifically provided in this subsection, the provisions of this subsection shall not be construed as altering or supplanting any other rule of law, and the requirements of this subsection shall be construed as being in addition to any such other rule of law.

''(5) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection. Such regulations may include exemptions from the application of this subsection.''

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions entered into after February 15, 2004.

**SEC. 502. PENALTY FOR FAILING TO DISCLOSE REPORTABLE TRANSACTION.**

(a) IN GENERAL.—Part I of subchapter B of chapter 68 (relating to assessable penalties) is amended by inserting after section 6707 the following new section:

**''SEC. 6707A. PENALTY FOR FAILURE TO INCLUDE REPORTABLE TRANSACTION INFORMATION WITH RETURN OR STATEMENT.**

''(a) IMPOSITION OF PENALTY.—Any person who fails to include on any return or statement any information with respect to a reportable transaction which is required under section 6011 to be included with such return or statement shall pay a penalty in the amount determined under subsection (b).

''(b) AMOUNT OF PENALTY.—

''(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the amount of the penalty under subsection (a) shall be $50,000.

''(2) LISTED TRANSACTION.—The amount of the penalty under subsection (a) with respect to a listed transaction shall be $100,000.

''(3) INCREASE IN PENALTY FOR LARGE ENTITIES AND HIGH NET WORTH INDIVIDUALS.—

''(A) IN GENERAL.—In the case of a failure under subsection (a) by—

''(i) a large entity, or

''(ii) a high net worth individual,

the penalty under paragraph (1) or (2) shall be twice the amount determined without regard to this paragraph.

''(B) LARGE ENTITY.—For purposes of subparagraph (A), the term 'large entity' means, with respect to any taxable year, a person (other than a natural person) with gross receipts in excess of $10,000,000 for the taxable year in which the reportable transaction occurs or the preceding taxable year. Rules similar to the rules of paragraph (2) and subparagraphs (B), (C), and (D) of paragraph (3) of section 448(c) shall apply for purposes of this subparagraph.

''(C) HIGH NET WORTH INDIVIDUAL.—The term 'high net worth individual' means, with respect to a transaction, a natural person whose net worth exceeds $2,000,000 immediately before the transaction.

''(c) DEFINITIONS.—For purposes of this section—

''(1) REPORTABLE TRANSACTION.—The term 'reportable transaction' means any transaction with respect to which information is required to be included with a return or statement because, as determined under regulations prescribed under section 6011, such transaction is of a type which the Secretary determines as having a potential for tax avoidance or evasion.

''(2) LISTED TRANSACTION.—Except as provided in regulations, the term 'listed transaction' means a reportable transaction which is the same as, or substantially similar to, a transaction specifically identified by the Secretary as a tax avoidance transaction for purposes of section 6011.

''(d) AUTHORITY TO RESCIND PENALTY.—

''(1) IN GENERAL.—The Commissioner of Internal Revenue may rescind all or any portion of any penalty imposed by this section with respect to any violation if—

''(A) the violation is with respect to a reportable transaction other than a listed transaction,

''(B) the person on whom the penalty is imposed has a history of complying with the requirements of this title,

''(C) it is shown that the violation is due to an unintentional mistake of fact;

''(D) imposing the penalty would be against equity and good conscience, and

''(E) rescinding the penalty would promote compliance with the requirements of this title and effective tax administration.

''(2) DISCRETION.—The exercise of authority under paragraph (1) shall be at the sole discretion of the Commissioner and may be delegated only to the head of the Office of Tax Shelter Analysis. The Commissioner, in the Commissioner's sole discretion, may establish a procedure to determine if a penalty should be referred to the Commissioner or the head of such Office for a determination under paragraph (1).

''(3) NO APPEAL.—Notwithstanding any other provision of law, any determination under this subsection may not be reviewed in any administrative or judicial proceeding.

''(4) RECORDS.—If a penalty is rescinded under paragraph (1), the Commissioner shall place in the file in the Office of the Commissioner the opinion of the Commissioner or the head of the Office of Tax Shelter Analysis with respect to the determination, including—

''(A) the facts and circumstances of the transaction,

''(B) the reasons for the rescission, and

''(C) the amount of the penalty rescinded.

''(5) REPORT.—The Commissioner shall each year report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate—

''(A) a summary of the total number and aggregate amount of penalties imposed, and rescinded, under this section, and

''(B) a description of each penalty rescinded under this subsection and the reasons therefor.

''(e) PENALTY REPORTED TO SEC.—In the case of a person—

''(1) which is required to file periodic reports under section 13 or 15(d) of the Securities Exchange Act of 1934 or is required to be consolidated with another person for purposes of such reports, and

''(2) which—

''(A) is required to pay a penalty under this section with respect to a listed transaction,

''(B) is required to pay a penalty under section 6662A with respect to any reportable transaction at a rate prescribed under section 6662A(c), or

''(C) is required to pay a penalty under section 6662B with respect to any noneconomic substance transaction,

the requirement to pay such penalty shall be disclosed in such reports filed by such person for such periods as the Secretary shall specify. Failure to make a disclosure in accordance with the preceding sentence shall be treated as a failure to which the penalty under subsection (b)(2) applies.

''(f) COORDINATION WITH OTHER PENALTIES.—The penalty imposed by this section is in addition to any penalty imposed under this title.''

(b) CONFORMING AMENDMENT.—The table of sections for part I of subchapter B of chapter 68 is amended by inserting after the item relating to section 6707 the following:

''Sec. 6707A. Penalty for failure to include reportable transaction information with return or statement.''

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to returns and statements the due date for which is after the date of the enactment of this Act.

**SEC. 503. ACCURACY-RELATED PENALTY FOR LISTED TRANSACTIONS AND OTHER REPORTABLE TRANSACTIONS HAVING A SIGNIFICANT TAX AVOIDANCE PURPOSE.**

(a) IN GENERAL.—Subchapter A of chapter 68 is amended by inserting after section 6662 the following new section:

**''SEC. 6662A. IMPOSITION OF ACCURACY-RELATED PENALTY ON UNDERSTATEMENTS WITH RESPECT TO REPORTABLE TRANSACTIONS.**

''(a) IMPOSITION OF PENALTY.—If a taxpayer has a reportable transaction understatement for any taxable year, there shall be added to the tax an amount equal to 20 percent of the amount of such understatement.

''(b) REPORTABLE TRANSACTION UNDERSTATEMENT.—For purposes of this section—

''(1) IN GENERAL.—The term 'reportable transaction understatement' means the sum of—

''(A) the product of—

''(i) the amount of the increase (if any) in taxable income which results from a difference between the proper tax treatment of an item to which this section applies and the taxpayer's treatment of such item (as shown on the taxpayer's return of tax), and

''(ii) the highest rate of tax imposed by section 1 (section 11 in the case of a taxpayer which is a corporation), and

''(B) the amount of the decrease (if any) in the aggregate amount of credits determined under subtitle A which results from a difference between the taxpayer's treatment of an item to which this section applies (as shown on the taxpayer's return of tax) and the proper tax treatment of such item.

For purposes of subparagraph (A), any reduction of the excess of deductions allowed for the taxable year over gross income for such year, and any reduction in the amount of capital losses which would (without regard to section 1211) be allowed for such year, shall be treated as an increase in taxable income.

''(2) ITEMS TO WHICH SECTION APPLIES.—This section shall apply to any item which is attributable to—

''(A) any listed transaction, and

''(B) any reportable transaction (other than a listed transaction) if a significant purpose of such transaction is the avoidance or evasion of Federal income tax.

''(c) HIGHER PENALTY FOR NONDISCLOSED LISTED AND OTHER AVOIDANCE TRANSACTIONS.—

''(1) IN GENERAL.—Subsection (a) shall be applied by substituting '30 percent' for '20 percent' with respect to the portion of any reportable transaction understatement with respect to which the requirement of section 6664(d)(2)(A) is not met.

''(2) RULES APPLICABLE TO COMPROMISE OF PENALTY.—

''(A) IN GENERAL.—If the 1st letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals has been sent with respect to a penalty to which paragraph (1) applies, only the Commissioner of Internal Revenue may compromise all or any portion of such penalty.

''(B) APPLICABLE RULES.—The rules of paragraphs (2), (3), (4), and (5) of section 6707A(d) shall apply for purposes of subparagraph (A).

''(d) DEFINITIONS OF REPORTABLE AND LISTED TRANSACTIONS.—For purposes of this section, the terms 'reportable transaction' and 'listed transaction' have the respective meanings given to such terms by section 6707A(c).

''(e) SPECIAL RULES.—

''(1) COORDINATION WITH PENALTIES, ETC., ON OTHER UNDERSTATEMENTS.—In the case of an understatement (as defined in section 6662(d)(2))—

''(A) the amount of such understatement (determined without regard to this paragraph) shall be increased by the aggregate amount of reportable transaction understatements and noneconomic substance transaction understatements for purposes of determining whether such understatement is a substantial understatement under section 6662(d)(1), and

''(B) the addition to tax under section 6662(a) shall apply only to the excess of the amount of the substantial understatement (if any) after the application of subparagraph (A) over the aggregate amount of reportable transaction understatements and noneconomic substance transaction understatements.

''(2) COORDINATION WITH OTHER PENALTIES.—

''(A) APPLICATION OF FRAUD PENALTY.—References to an underpayment in section 6663 shall be treated as including references to a reportable transaction understatement and a noneconomic substance transaction understatement.

''(B) NO DOUBLE PENALTY.—This section shall not apply to any portion of an understatement on which a penalty is imposed under section 6662B or 6663.

''(3) SPECIAL RULE FOR AMENDED RETURNS.—Except as provided in regulations, in no event shall any tax treatment included with an amendment or supplement to a return of tax be taken into account in determining the amount of any reportable transaction understatement or noneconomic substance transaction understatement if the amendment or supplement is filed after the earlier of the date the taxpayer is first contacted by the Secretary regarding the examination of the return or such other date as is specified by the Secretary.

''(4) NONECONOMIC SUBSTANCE TRANSACTION UNDERSTATEMENT.—For purposes of this subsection, the term 'noneconomic substance transaction understatement' has the meaning given such term by section 6662B(c).

''(5) CROSS REFERENCE.—

**''For reporting of section 6662A(c) penalty to the Securities and Exchange Commission, see section 6707A(e).''**

(b) DETERMINATION OF OTHER UNDERSTATEMENTS.—Subparagraph (A) of section 6662(d)(2) is amended by adding at the end the following flush sentence:

''The excess under the preceding sentence shall be determined without regard to items to which section 6662A applies and without regard to items with respect to which a penalty is imposed by section 6662B.''

(c) REASONABLE CAUSE EXCEPTION.—

(1) IN GENERAL.—Section 6664 is amended by adding at the end the following new subsection:

''(d) REASONABLE CAUSE EXCEPTION FOR REPORTABLE TRANSACTION UNDERSTATEMENTS.—

''(1) IN GENERAL.—No penalty shall be imposed under section 6662A with respect to any portion of a reportable transaction understatement if it is shown that there was a reasonable cause for such portion and that the taxpayer acted in good faith with respect to such portion.

''(2) SPECIAL RULES.—Paragraph (1) shall not apply to any reportable transaction understatement unless—

''(A) the relevant facts affecting the tax treatment of the item are adequately disclosed in accordance with the regulations prescribed under section 6011,

''(B) there is or was substantial authority for such treatment, and

''(C) the taxpayer reasonably believed that such treatment was more likely than not the proper treatment.

A taxpayer failing to adequately disclose in accordance with section 6011 shall be treated as meeting the requirements of subparagraph (A) if the penalty for such failure was rescinded under section 6707A(d).

''(3) RULES RELATING TO REASONABLE BELIEF.—For purposes of paragraph (2)(C)—

''(A) IN GENERAL.—A taxpayer shall be treated as having a reasonable belief with respect to the tax treatment of an item only if such belief—

''(i) is based on the facts and law that exist at the time the return of tax which includes such tax treatment is filed, and

''(ii) relates solely to the taxpayer's chances of success on the merits of such treatment and does not take into account the possibility that a return will not be audited, such treatment will not be raised on audit, or such treatment will be resolved through settlement if it is raised.

''(B) CERTAIN OPINIONS MAY NOT BE RELIED UPON.—

''(i) IN GENERAL.—An opinion of a tax advisor may not be relied upon to establish the reasonable belief of a taxpayer if—

''(I) the tax advisor is described in clause (ii), or

''(II) the opinion is described in clause (iii).

''(ii) DISQUALIFIED TAX ADVISORS.—A tax advisor is described in this clause if the tax advisor—

''(I) is a material advisor (within the meaning of section 6111(b)(1)) who participates in the organization, management, promotion, or sale of the transaction or who is related (within the meaning of section 267(b) or 707(b)(1)) to any person who so participates,

''(II) is compensated directly or indirectly by a material advisor with respect to the transaction,

''(III) has a fee arrangement with respect to the transaction which is contingent on all or part of the intended tax benefits from the transaction being sustained, or

''(IV) as determined under regulations prescribed by the Secretary, has a continuing financial interest with respect to the transaction.

''(iii) DISQUALIFIED OPINIONS.—For purposes of clause (i), an opinion is disqualified if the opinion—

''(I) is based on unreasonable factual or legal assumptions (including assumptions as to future events),

''(II) unreasonably relies on representations, statements, findings, or agreements of the taxpayer or any other person,

''(III) does not identify and consider all relevant facts, or

''(IV) fails to meet any other requirement as the Secretary may prescribe.''

(2) CONFORMING AMENDMENT.—The heading for subsection (c) of section 6664 is amended

by inserting ''FOR UNDERPAYMENTS'' after ''EXCEPTION''.

(d) CONFORMING AMENDMENTS.—

(1) Subparagraph (C) of section 461(i)(3) is amended by striking ''section 6662(d)(2)(C)(iii)'' and inserting ''section 1274(b)(3)(C)''.

(2) Paragraph (3) of section 1274(b) is amended—

(A) by striking ''(as defined in section 6662(d)(2)(C)(iii))'' in subparagraph (B)(i), and

(B) by adding at the end the following new subparagraph:

''(C) TAX SHELTER.—For purposes of subparagraph (B), the term 'tax shelter' means—

''(i) a partnership or other entity,

''(ii) any investment plan or arrangement, or

''(iii) any other plan or arrangement,

if a significant purpose of such partnership, entity, plan, or arrangement is the avoidance or evasion of Federal income tax.''

(3) Section 6662(d)(2) is amended by striking subparagraphs (C) and (D).

(4) Section 6664(c)(1) is amended by striking ''this part'' and inserting ''section 6662 or 6663''.

(5) Subsection (b) of section 7525 is amended by striking ''section 6662(d)(2)(C)(iii)'' and inserting ''section 1274(b)(3)(C)''.

(6)(A) The heading for section 6662 is amended to read as follows:

**''SEC. 6662. IMPOSITION OF ACCURACY-RELATED PENALTY ON UNDERPAYMENTS.''**

(B) The table of sections for part II of subchapter A of chapter 68 is amended by striking the item relating to section 6662 and inserting the following new items:

''Sec. 6662. Imposition of accuracy-related penalty on underpayments.

''Sec. 6662A. Imposition of accuracy-related penalty on understatements with respect to reportable transactions.''

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after the date of the enactment of this Act.

**SEC. 504. PENALTY FOR UNDERSTATEMENTS ATTRIBUTABLE TO TRANSACTIONS LACKING ECONOMIC SUBSTANCE, ETC.**

(a) IN GENERAL.—Subchapter A of chapter 68 is amended by inserting after section 6662A the following new section:

**''SEC. 6662B. PENALTY FOR UNDERSTATEMENTS ATTRIBUTABLE TO TRANSACTIONS LACKING ECONOMIC SUBSTANCE, ETC.**

''(a) IMPOSITION OF PENALTY.—If a taxpayer has an noneconomic substance transaction understatement for any taxable year, there shall be added to the tax an amount equal to 40 percent of the amount of such understatement.

''(b) REDUCTION OF PENALTY FOR DISCLOSED TRANSACTIONS.—Subsection (a) shall be applied by substituting '20 percent' for '40 percent' with respect to the portion of any noneconomic substance transaction understatement with respect to which the relevant facts affecting the tax treatment of the item are adequately disclosed in the return or a statement attached to the return.

''(c) NONECONOMIC SUBSTANCE TRANSACTION UNDERSTATEMENT.—For purposes of this section—

''(1) IN GENERAL.—The term 'noneconomic substance transaction understatement' means any amount which would be an understatement under section 6662A(b)(1) if section 6662A were applied by taking into account items attributable to noneconomic substance transactions rather than items to which section 6662A applies.

''(2) NONECONOMIC SUBSTANCE TRANSACTION.—The term 'noneconomic substance transaction' means any transaction if—

''(A) there is a lack of economic substance (within the meaning of section 7701(m)(1)) for the transaction giving rise to the claimed benefit or the transaction was not respected under section 7701(m)(2), or

''(B) the transaction fails to meet the requirements of any similar rule of law.

''(d) RULES APPLICABLE TO COMPROMISE OF PENALTY.—

''(1) IN GENERAL.—If the 1st letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals has been sent with respect to a penalty to which this section applies, only the Commissioner of Internal Revenue may compromise all or any portion of such penalty.

''(2) APPLICABLE RULES.—The rules of paragraphs (2), (3), (4), and (5) of section 6707A(d) shall apply for purposes of paragraph (1).

''(e) COORDINATION WITH OTHER PENALTIES.—Except as otherwise provided in this part, the penalty imposed by this section shall be in addition to any other penalty imposed by this title.

''(f) CROSS REFERENCES.—

**''(1) For coordination of penalty with understatements under section 6662 and other special rules, see section 6662A(e).**

**''(2) For reporting of penalty imposed under this section to the Securities and Exchange Commission, see section 6707A(e).''**

(b) CLERICAL AMENDMENT.—The table of sections for part II of subchapter A of chapter 68 is amended by inserting after the item relating to section 6662A the following new item:

''Sec. 6662B. Penalty for understatements attributable to transactions lacking economic substance, etc.''

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions entered into after February 15, 2004.

**SEC. 505. MODIFICATIONS OF SUBSTANTIAL UNDERSTATEMENT PENALTY FOR NONREPORTABLE TRANSACTIONS.**

(a) SUBSTANTIAL UNDERSTATEMENT OF CORPORATIONS.—Section 6662(d)(1)(B) (relating to special rule for corporations) is amended to read as follows:

''(B) SPECIAL RULE FOR CORPORATIONS.—In the case of a corporation other than an S corporation or a personal holding company (as defined in section 542), there is a substantial understatement of income tax for any taxable year if the amount of the understatement for the taxable year exceeds the lesser of—

''(i) 10 percent of the tax required to be shown on the return for the taxable year (or, if greater, $10,000), or

''(ii) $10,000,000.''

(b) REDUCTION FOR UNDERSTATEMENT OF TAXPAYER DUE TO POSITION OF TAXPAYER OR DISCLOSED ITEM.—

(1) IN GENERAL.—Section 6662(d)(2)(B)(i) (relating to substantial authority) is amended to read as follows:

''(i) the tax treatment of any item by the taxpayer if the taxpayer had reasonable belief that the tax treatment was more likely than not the proper treatment, or''.

(2) CONFORMING AMENDMENT.—Section 6662(d) is amended by adding at the end the following new paragraph:

''(3) SECRETARIAL LIST.—For purposes of this subsection, section 6664(d)(2), and section 6694(a)(1), the Secretary may prescribe a list of positions for which the Secretary believes there is not substantial authority or there is no reasonable belief that the tax treatment is more likely than not the proper tax treatment. Such list (and any revisions thereof) shall be published in the Federal Register or the Internal Revenue Bulletin.''

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

**SEC. 506. TAX SHELTER EXCEPTION TO CONFIDENTIALITY PRIVILEGES RELATING TO TAXPAYER COMMUNICATIONS.**

(a) IN GENERAL.—Section 7525(b) (relating to section not to apply to communications regarding corporate tax shelters) is amended to read as follows:

''(b) SECTION NOT TO APPLY TO COMMUNICATIONS REGARDING TAX SHELTERS.—The privilege under subsection (a) shall not apply to any written communication which is—

''(1) between a federally authorized tax practitioner and—

''(A) any person,

''(B) any director, officer, employee, agent, or representative of the person, or

''(C) any other person holding a capital or profits interest in the person, and

''(2) in connection with the promotion of the direct or indirect participation of the person in any tax shelter (as defined in section 1274(b)(3)(C)).''

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to communications made on or after the date of the enactment of this Act.

**SEC. 507. DISCLOSURE OF REPORTABLE TRANSACTIONS.**

(a) IN GENERAL.—Section 6111 (relating to registration of tax shelters) is amended to read as follows:

**''SEC. 6111. DISCLOSURE OF REPORTABLE TRANSACTIONS.**

''(a) IN GENERAL.—Each material advisor with respect to any reportable transaction shall make a return (in such form as the Secretary may prescribe) setting forth—

''(1) information identifying and describing the transaction,

''(2) information describing any potential tax benefits expected to result from the transaction, and

''(3) such other information as the Secretary may prescribe.

Such return shall be filed not later than the date specified by the Secretary.

''(b) DEFINITIONS.—For purposes of this section—

''(1) MATERIAL ADVISOR.—

''(A) IN GENERAL.—The term 'material advisor' means any person—

''(i) who provides any material aid, assistance, or advice with respect to organizing, promoting, selling, implementing, or carrying out any reportable transaction, and

''(ii) who directly or indirectly derives gross income in excess of the threshold amount for such advice or assistance.

''(B) THRESHOLD AMOUNT.—For purposes of subparagraph (A), the threshold amount is—

''(i) $50,000 in the case of a reportable transaction substantially all of the tax benefits from which are provided to natural persons, and

''(ii) $250,000 in any other case.

''(2) REPORTABLE TRANSACTION.—The term 'reportable transaction' has the meaning given to such term by section 6707A(c).

''(c) REGULATIONS.—The Secretary may prescribe regulations which provide—

''(1) that only 1 person shall be required to meet the requirements of subsection (a) in cases in which 2 or more persons would otherwise be required to meet such requirements,

''(2) exemptions from the requirements of this section, and

''(3) such rules as may be necessary or appropriate to carry out the purposes of this section.''

(b) CONFORMING AMENDMENTS.—

(1) The item relating to section 6111 in the table of sections for subchapter B of chapter 61 is amended to read as follows:

''Sec. 6111. Disclosure of reportable transactions.''

(2)(A) So much of section 6112 as precedes subsection (c) thereof is amended to read as follows:

**''SEC. 6112. MATERIAL ADVISORS OF REPORTABLE TRANSACTIONS MUST KEEP LISTS OF ADVISEES.**

''(a) IN GENERAL.—Each material advisor (as defined in section 6111) with respect to any reportable transaction (as defined in section 6707A(c)) shall maintain, in such manner as the Secretary may by regulations prescribe, a list—

''(1) identifying each person with respect to whom such advisor acted as such a material advisor with respect to such transaction, and

''(2) containing such other information as the Secretary may by regulations require.

This section shall apply without regard to whether a material advisor is required to file a return under section 6111 with respect to such transaction.''

(B) Section 6112 is amended by redesignating subsection (c) as subsection (b).

(C) Section 6112(b), as redesignated by subparagraph (B), is amended—

(i) by inserting ''written'' before ''request'' in paragraph (1)(A), and

(ii) by striking ''shall prescribe'' in paragraph (2) and inserting ''may prescribe''.

(D) The item relating to section 6112 in the table of sections for subchapter B of chapter 61 is amended to read as follows:

''Sec. 6112. Material advisors of reportable transactions must keep lists of advisees.''

(3)(A) The heading for section 6708 is amended to read as follows:

**''SEC. 6708. FAILURE TO MAINTAIN LISTS OF ADVISEES WITH RESPECT TO REPORTABLE TRANSACTIONS.''**

(B) The item relating to section 6708 in the table of sections for part I of subchapter B of chapter 68 is amended to read as follows:

''Sec. 6708. Failure to maintain lists of advisees with respect to reportable transactions.''

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions with respect to which material aid, assistance, or advice referred to in section 6111(b)(1)(A)(i) of the Internal Revenue Code of 1986 (as added by this section) is provided after the date of the enactment of this Act.

**SEC. 508. MODIFICATIONS TO PENALTY FOR FAILURE TO REGISTER TAX SHELTERS.**

(a) IN GENERAL.—Section 6707 (relating to failure to furnish information regarding tax shelters) is amended to read as follows:

**''SEC. 6707. FAILURE TO FURNISH INFORMATION REGARDING REPORTABLE TRANSACTIONS.**

''(a) IN GENERAL.—If a person who is required to file a return under section 6111(a) with respect to any reportable transaction—

''(1) fails to file such return on or before the date prescribed therefor, or

''(2) files false or incomplete information with the Secretary with respect to such transaction,

such person shall pay a penalty with respect to such return in the amount determined under subsection (b).

''(b) AMOUNT OF PENALTY.—

''(1) IN GENERAL.—Except as provided in paragraph (2), the penalty imposed under subsection (a) with respect to any failure shall be $50,000.

''(2) LISTED TRANSACTIONS.—The penalty imposed under subsection (a) with respect to any listed transaction shall be an amount equal to the greater of—

''(A) $200,000, or

''(B) 50 percent of the gross income derived by such person with respect to aid, assistance, or advice which is provided with respect to the reportable transaction before the date the return including the transaction is filed under section 6111.

Subparagraph (B) shall be applied by substituting '75 percent' for '50 percent' in the case of an intentional failure or act described in subsection (a).

''(c) RESCISSION AUTHORITY.—The provisions of section 6707A(d) (relating to authority of Commissioner to rescind penalty) shall apply to any penalty imposed under this section.

''(d) REPORTABLE AND LISTED TRANSACTIONS.—The terms 'reportable transaction' and 'listed transaction' have the respective meanings given to such terms by section 6707A(c).''.

(b) CLERICAL AMENDMENT.—The item relating to section 6707 in the table of sections for part I of subchapter B of chapter 68 is amended by striking ''tax shelters'' and inserting ''reportable transactions''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to returns the due date for which is after the date of the enactment of this Act.

**SEC. 509. MODIFICATION OF PENALTY FOR FAILURE TO MAINTAIN LISTS OF INVESTORS.**

(a) IN GENERAL.—Subsection (a) of section 6708 is amended to read as follows:

''(a) IMPOSITION OF PENALTY.—

''(1) IN GENERAL.—If any person who is required to maintain a list under section 6112(a) fails to make such list available upon written request to the Secretary in accordance with section 6112(b)(1)(A) within 20 business days after the date of the Secretary's request, such person shall pay a penalty of $10,000 for each day of such failure after such 20th day.

''(2) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed by paragraph (1) with respect to the failure on any day if such failure is due to reasonable cause.''

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to requests made after the date of the enactment of this Act.

**SEC. 510. MODIFICATION OF ACTIONS TO ENJOIN CERTAIN CONDUCT RELATED TO TAX SHELTERS AND REPORTABLE TRANSACTIONS.**

(a) IN GENERAL.—Section 7408 (relating to action to enjoin promoters of abusive tax shelters, etc.) is amended by redesignating subsection (c) as subsection (d) and by striking subsections (a) and (b) and inserting the following new subsections:

''(a) AUTHORITY TO SEEK INJUNCTION.—A civil action in the name of the United States to enjoin any person from further engaging in specified conduct may be commenced at the request of the Secretary. Any action under this section shall be brought in the district court of the United States for the district in which such person resides, has his principal place of business, or has engaged in specified conduct. The court may exercise its jurisdiction over such action (as provided in section 7402(a)) separate and apart from any other action brought by the United States against such person.

''(b) ADJUDICATION AND DECREE.—In any action under subsection (a), if the court finds—

''(1) that the person has engaged in any specified conduct, and

''(2) that injunctive relief is appropriate to prevent recurrence of such conduct,

the court may enjoin such person from engaging in such conduct or in any other activity subject to penalty under this title.

''(c) SPECIFIED CONDUCT.—For purposes of this section, the term 'specified conduct' means any action, or failure to take action, subject to penalty under section 6700, 6701, 6707, or 6708.''

(b) CONFORMING AMENDMENTS.—

(1) The heading for section 7408 is amended to read as follows:

**''SEC. 7408. ACTIONS TO ENJOIN SPECIFIED CONDUCT RELATED TO TAX SHELTERS AND REPORTABLE TRANSACTIONS.''**

(2) The table of sections for subchapter A of chapter 67 is amended by striking the item relating to section 7408 and inserting the following new item:

''Sec. 7408. Actions to enjoin specified conduct related to tax shelters and reportable transactions.''

(c) EFFECTIVE DATE.—The amendment made by this section shall take effect on the day after the date of the enactment of this Act.

**SEC. 511. UNDERSTATEMENT OF TAXPAYER'S LIABILITY BY INCOME TAX RETURN PREPARER.**

(a) STANDARDS CONFORMED TO TAXPAYER STANDARDS.—Section 6694(a) (relating to understatements due to unrealistic positions) is amended—

(1) by striking ''realistic possibility of being sustained on its merits'' in paragraph (1) and inserting ''reasonable belief that the tax treatment in such position was more likely than not the proper treatment'',

(2) by striking ''or was frivolous'' in paragraph (3) and inserting ''or there was no reasonable basis for the tax treatment of such position'', and

(3) by striking ''UNREALISTIC'' in the heading and inserting ''IMPROPER''.

(b) AMOUNT OF PENALTY.—Section 6694 is amended—

(1) by striking ''$250'' in subsection (a) and inserting ''$1,000'', and

(2) by striking ''$1,000'' in subsection (b) and inserting ''$5,000''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to documents prepared after the date of the enactment of this Act.

**SEC. 512. PENALTY ON FAILURE TO REPORT INTERESTS IN FOREIGN FINANCIAL ACCOUNTS.**

(a) IN GENERAL.—Section 5321(a)(5) of title 31, United States Code, is amended to read as follows:

''(5) FOREIGN FINANCIAL AGENCY TRANSACTION VIOLATION.—

''(A) PENALTY AUTHORIZED.—The Secretary of the Treasury may impose a civil money penalty on any person who violates, or causes any violation of, any provision of section 5314.

''(B) AMOUNT OF PENALTY.—

''(i) IN GENERAL.—Except as provided in subparagraph (C), the amount of any civil penalty imposed under subparagraph (A) shall not exceed $5,000.

''(ii) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed under subparagraph (A) with respect to any violation if—

''(I) such violation was due to reasonable cause, and

''(II) the amount of the transaction or the balance in the account at the time of the transaction was properly reported.

''(C) WILLFUL VIOLATIONS.—In the case of any person willfully violating, or willfully causing any violation of, any provision of section 5314—

''(i) the maximum penalty under subparagraph (B)(i) shall be increased to the greater of—

''(I) $25,000, or

''(II) the amount (not exceeding $100,000) determined under subparagraph (D), and

''(ii) subparagraph (B)(ii) shall not apply.

''(D) AMOUNT.—The amount determined under this subparagraph is—

''(i) in the case of a violation involving a transaction, the amount of the transaction, or

''(ii) in the case of a violation involving a failure to report the existence of an account or any identifying information required to be provided with respect to an account, the balance in the account at the time of the violation.''

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to violations occurring after the date of the enactment of this Act.

**SEC. 513. FRIVOLOUS TAX SUBMISSIONS.**

(a) CIVIL PENALTIES.—Section 6702 is amended to read as follows:

**''SEC. 6702. FRIVOLOUS TAX SUBMISSIONS.**

''(a) CIVIL PENALTY FOR FRIVOLOUS TAX RETURNS.—A person shall pay a penalty of $5,000 if—

''(1) such person files what purports to be a return of a tax imposed by this title but which—

''(A) does not contain information on which the substantial correctness of the self-assessment may be judged, or

''(B) contains information that on its face indicates that the self-assessment is substantially incorrect; and

''(2) the conduct referred to in paragraph (1)—

''(A) is based on a position which the Secretary has identified as frivolous under subsection (c), or

''(B) reflects a desire to delay or impede the administration of Federal tax laws.

''(b) CIVIL PENALTY FOR SPECIFIED FRIVOLOUS SUBMISSIONS.—

''(1) IMPOSITION OF PENALTY.—Except as provided in paragraph (3), any person who submits a specified frivolous submission shall pay a penalty of $5,000.

''(2) SPECIFIED FRIVOLOUS SUBMISSION.—For purposes of this section—

''(A) SPECIFIED FRIVOLOUS SUBMISSION.—The term 'specified frivolous submission' means a specified submission if any portion of such submission—

''(i) is based on a position which the Secretary has identified as frivolous under subsection (c), or

''(ii) reflects a desire to delay or impede the administration of Federal tax laws.

''(B) SPECIFIED SUBMISSION.—The term 'specified submission' means—

''(i) a request for a hearing under—

''(I) section 6320 (relating to notice and opportunity for hearing upon filing of notice of lien), or

''(II) section 6330 (relating to notice and opportunity for hearing before levy), and

''(ii) an application under—

''(I) section 6159 (relating to agreements for payment of tax liability in installments),

''(II) section 7122 (relating to compromises), or

''(III) section 7811 (relating to taxpayer assistance orders).

''(3) OPPORTUNITY TO WITHDRAW SUBMISSION.—If the Secretary provides a person with notice that a submission is a specified frivolous submission and such person withdraws such submission within 30 days after such notice, the penalty imposed under paragraph (1) shall not apply with respect to such submission.

''(c) LISTING OF FRIVOLOUS POSITIONS.—The Secretary shall prescribe (and periodically revise) a list of positions which the Secretary has identified as being frivolous for purposes of this subsection. The Secretary shall not include in such list any position that the Secretary determines meets the requirement of section 6662(d)(2)(B)(ii)(II).

''(d) REDUCTION OF PENALTY.—The Secretary may reduce the amount of any penalty imposed under this section if the Secretary determines that such reduction would promote compliance with and administration of the Federal tax laws.

''(e) PENALTIES IN ADDITION TO OTHER PENALTIES.—The penalties imposed by this section shall be in addition to any other penalty provided by law.''

(b) TREATMENT OF FRIVOLOUS REQUESTS FOR HEARINGS BEFORE LEVY.—

(1) FRIVOLOUS REQUESTS DISREGARDED.—Section 6330 (relating to notice and opportunity for hearing before levy) is amended by adding at the end the following new subsection:

''(g) FRIVOLOUS REQUESTS FOR HEARING, ETC.—Notwithstanding any other provision of this section, if the Secretary determines that any portion of a request for a hearing under this section or section 6320 meets the requirement of clause (i) or (ii) of section 6702(b)(2)(A), then the Secretary may treat such portion as if it were never submitted and such portion shall not be subject to any further administrative or judicial review.''

(2) PRECLUSION FROM RAISING FRIVOLOUS ISSUES AT HEARING.—Section 6330(c)(4) is amended—

(A) by striking ''(A)'' and inserting ''(A)(i)'';

(B) by striking ''(B)'' and inserting ''(ii)'';

(C) by striking the period at the end of the first sentence and inserting ''; or''; and

(D) by inserting after subparagraph (A)(ii) (as so redesignated) the following:

''(B) the issue meets the requirement of clause (i) or (ii) of section 6702(b)(2)(A).''

(3) STATEMENT OF GROUNDS.—Section 6330(b)(1) is amended by striking ''under subsection (a)(3)(B)'' and inserting ''in writing under subsection (a)(3)(B) and states the grounds for the requested hearing''.

(c) TREATMENT OF FRIVOLOUS REQUESTS FOR HEARINGS UPON FILING OF NOTICE OF LIEN.—Section 6320 is amended—

(1) in subsection (b)(1), by striking ''under subsection (a)(3)(B)'' and inserting ''in writing under subsection (a)(3)(B) and states the grounds for the requested hearing'', and

(2) in subsection (c), by striking ''and (e)'' and inserting ''(e), and (g)''.

(d) TREATMENT OF FRIVOLOUS APPLICATIONS FOR OFFERS-IN-COMPROMISE AND INSTALLMENT AGREEMENTS.—Section 7122 is amended by adding at the end the following new subsection:

''(e) FRIVOLOUS SUBMISSIONS, ETC.—Notwithstanding any other provision of this section, if the Secretary determines that any portion of an application for an offer-in-compromise or installment agreement submitted under this section or section 6159 meets the requirement of clause (i) or (ii) of section 6702(b)(2)(A), then the Secretary may treat such portion as if it were never submitted and such portion shall not be subject to any further administrative or judicial review.''

(e) CLERICAL AMENDMENT.—The table of sections for part I of subchapter B of chapter 68 is amended by striking the item relating to section 6702 and inserting the following new item:

''Sec. 6702. Frivolous tax submissions.''

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to submissions made and issues raised after the date on which the Secretary first prescribes a list under section 6702(c) of the Internal Revenue Code of 1986, as amended by subsection (a).

**SEC. 514. REGULATION OF INDIVIDUALS PRACTICING BEFORE THE DEPARTMENT OF TREASURY.**

(a) CENSURE; IMPOSITION OF PENALTY.—

(1) IN GENERAL.—Section 330(b) of title 31, United States Code, is amended—

(A) by inserting '', or censure,'' after ''Department'', and

(B) by adding at the end the following new flush sentence:

''The Secretary may impose a monetary penalty on any representative described in the preceding sentence. If the representative was acting on behalf of an employer or any firm or other entity in connection with the conduct giving rise to such penalty, the Secretary may impose a monetary penalty on such employer, firm, or entity if it knew, or reasonably should have known, of such conduct. Such penalty shall not exceed the gross income derived (or to be derived) from the conduct giving rise to the penalty and may be in addition to, or in lieu of, any suspension, disbarment, or censure.''

(2) EFFECTIVE DATE.—The amendments made by this subsection shall apply to actions taken after the date of the enactment of this Act.

(b) TAX SHELTER OPINIONS, ETC.—Section 330 of such title 31 is amended by adding at the end the following new subsection:

''(d) Nothing in this section or in any other provision of law shall be construed to limit the authority of the Secretary of the Treasury to impose standards applicable to the rendering of written advice with respect to any entity, transaction plan or arrangement, or other plan or arrangement, which is of a type which the Secretary determines as having a potential for tax avoidance or evasion.''

**SEC. 515. PENALTY ON PROMOTERS OF TAX SHELTERS.**

(a) PENALTY ON PROMOTING ABUSIVE TAX SHELTERS.—Section 6700(a) is amended by adding at the end the following new sentence: ''Notwithstanding the first sentence, if an activity with respect to which a penalty imposed under this subsection involves a statement described in paragraph (2)(A), the amount of the penalty shall be equal to 50 percent of the gross income derived (or to be derived) from such activity by the person on which the penalty is imposed.''

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to activities after the date of the enactment of this Act.

**SEC. 516. STATUTE OF LIMITATIONS FOR TAXABLE YEARS FOR WHICH LISTED TRANSACTIONS NOT REPORTED.**

(a) IN GENERAL.—Section 6501(e)(1) (relating to substantial omission of items for income taxes) is amended by adding at the end the following new subparagraph:

''(C) LISTED TRANSACTIONS.—If a taxpayer fails to include on any return or statement for any taxable year any information with respect to a listed transaction (as defined in section 6707A(c)(2)) which is required under section 6011 to be included with such return or statement, the tax for such taxable year may be assessed, or a proceeding in court for collection of such tax may be begun without assessment, at any time within 6 years after the time the return is filed. This subparagraph shall not apply to any taxable year if the time for assessment or beginning the proceeding in court has expired before the time a transaction is treated as a listed transaction under section 6011.''

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to transactions in taxable years beginning after the date of the enactment of this Act.

**SEC. 517. DENIAL OF DEDUCTION FOR INTEREST ON UNDERPAYMENTS ATTRIBUTABLE TO NONDISCLOSED REPORTABLE AND NONECONOMIC SUBSTANCE TRANSACTIONS.**

(a) IN GENERAL.—Section 163 (relating to deduction for interest) is amended by redesignating subsection (m) as subsection (n) and by inserting after subsection (l) the following new subsection:

''(m) INTEREST ON UNPAID TAXES ATTRIBUTABLE TO NONDISCLOSED REPORTABLE TRANSACTIONS AND NONECONOMIC SUBSTANCE TRANSACTIONS.—No deduction shall be allowed under this chapter for any interest paid or accrued under section 6601 on any underpayment of tax which is attributable to—

''(1) the portion of any reportable transaction understatement (as defined in section 6662A(b)) with respect to which the requirement of section 6664(d)(2)(A) is not met, or

''(2) any noneconomic substance transaction understatement (as defined in section 6662B(c)).''

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions in taxable years beginning after the date of the enactment of this Act.

**SEC. 518. AUTHORIZATION OF APPROPRIATIONS FOR TAX LAW ENFORCEMENT.**

There is authorized to be appropriated $300,000,000 for each fiscal year beginning after September 30, 2002, for the purpose of carrying out tax law enforcement to combat tax avoidance transactions and other tax shelters, including the use of offshore financial accounts to conceal taxable income.

**Subtitle B—Other Provisions**

**SEC. 521. AFFIRMATION OF CONSOLIDATED RETURN REGULATION AUTHORITY.**

(a) IN GENERAL.—Section 1502 (relating to consolidated return regulations) is amended by adding at the end the following new sentence: ''In prescribing such regulations, the Secretary may prescribe rules applicable to corporations filing consolidated returns under section 1501 that are different from other provisions of this title that would apply if such corporations filed separate returns.''

(b) RESULT NOT OVERTURNED.—Notwithstanding subsection (a), the Internal Revenue Code of 1986 shall be construed by treating Treasury regulation §1.1502–20(c)(1)(iii) (as in effect on January 1, 2001) as being inapplicable to the type of factual situation in 255 F.3d 1357 (Fed. Cir. 2001).

(c) EFFECTIVE DATE.—The provisions of this section shall apply to taxable years beginning before, on, or after the date of the enactment of this Act.

**SEC. 522. SIGNING OF CORPORATE TAX RETURNS BY CHIEF EXECUTIVE OFFICER.**

(a) IN GENERAL.—Section 6062 (relating to signing of corporation returns) is amended by striking the first sentence and inserting the following new sentence: ''The return of a corporation with respect to income shall be signed by the chief executive officer of such corporation (or other such officer of the corporation as the Secretary may designate if the corporation does not have a chief executive officer). The preceding sentence shall not apply to any return of a regulated investment company (within the meaning of section 851).''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to returns filed after the date of the enactment of this Act.

**SEC. 523. DISCLOSURE OF TAX SHELTERS TO CORPORATE AUDIT COMMITTEE.**

(a) IN GENERAL.—Subchapter B of chapter 61 (relating to information and returns) is amended by inserting after section 6111 the following new section:

**''SEC. 6111A. DISCLOSURE OF REPORTABLE TRANSACTIONS TO CORPORATE AUDIT COMMITTEE.**

''If a corporation is required under section 6011 to include on any return or statement any information with respect to a reportable transaction (as defined in section 6707A(c)), the chief executive officer of such corporation (or other such officer of the corporation as the Secretary may designate if the corporation does not have a chief executive officer) shall disclose such information in a statement to the audit committee of the board of directors of such corporation or any similar committee or entity performing auditing functions on behalf of such corporation.''.

(b) PENALTY FOR FAILURE TO DISCLOSE.—Section 6707A(a) (relating to penalty for failure to include reportable transaction information with return or statement) is amended by inserting '', or fails to file a statement required under section 6111A,'' before ''shall pay''.

(c) CLERICAL AMENDMENT.—The table of sections for subchapter B of chapter 61 is amended by inserting after the item relating to section 6111 the following new item:

''Sec. 6111A. Disclosure of reportable transactions to corporate audit committee.''

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions in taxable years beginning after the date of the enactment of this Act.

**Subtitle C—Budget Points of Order**

**SEC. 531. EXTENSION OF PAY-AS-YOU-GO ENFORCEMENT IN THE SENATE.**

Section 2 of Senate Resolution 304 (107th Congress) is amended—

(1) in subsection (a)(1), by striking ''April 15, 2003'' and inserting ''the end of the 108th Congress''; and

(2) in subsection (b)(1)(B), by striking ''April 15, 2003'' and inserting ''at the end of the 108th Congress''.

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By Mrs. DOLE:

S. 420. A bill to provide for the acknowledgment of the Lumbee Tribe of North Carolina, and for other purposes; to the Committee on Indian Affairs.

Mrs. DOLE. Mr. President, I ask unanimous consent that the text of the attached legislation ''Lumbee Acknowledgment Act of 2003,'' be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 420

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Lumbee Acknowledgment Act of 2003''.

**SEC. 2. LUMBEE ACKNOWLEDGMENT.**

The Act of June 7, 1956 (70 Stat. 254, chapter 375), is amended to read as follows:

**''SECTION 1. SHORT TITLE.**

''This Act may be cited as the 'Lumbee Acknowledgment Act'.

**''SEC. 2. FINDINGS.**

''Congress finds that—

''(1) many Indians living in Robeson County, North Carolina, and adjoining counties in the State are descendants of a once large and prosperous tribe that occupied the land along the Lumbee River at the time when the earliest European settlements were established in the area;

''(2) when the members of that tribe first made contact with the settlers, the members were a well-established and distinctive people living in European-style houses, tilling the soil, owning slaves and livestock, and practicing many of the arts and crafts of European civilization;

''(3) tribal legend, a distinctive appearance and manner of speech, and the frequent recurrence among tribal members of family names (such as Bullard, Chavis, Drinkwater, Locklear, Lowery, Oxendine, and Sampson) that were found on the roster of the earliest English settlements, provide evidence that the Indians now living in the area may trace their ancestry back to both—

''(A) European settlers; and

''(B) certain coastal tribes of Indians in the State, principally the Cheraw Tribe;

''(4) the Lumbee Tribe has remained a distinct Indian community since European settlers first made contact with the community;

''(5) the members of the Tribe—

''(A) are naturally and understandably proud of their heritage; and

''(B) seek to establish their social status and preserve their ancestry;

''(6) the State has acknowledged the Lumbee Indians as an Indian tribe since 1885;

''(7) in 1956, Congress acknowledged the Lumbee Indians as an Indian tribe but withheld from the Tribe the benefits, privileges, and immunities to which the Tribe and members of the Tribe would have been entitled by virtue of status as an acknowledged Indian tribe; and

''(8)(A) the Tribe is entitled to full Federal acknowledgment; and

''(B) the programs, services, and benefits that accompany that status should be extended to the Tribe and members of the Tribe.

**''SEC. 3. DEFINITIONS.**

''In this Act:

''(1) ACKNOWLEDGMENT.—The term 'acknowledgment' means acknowledgment by the United States that—

''(A) an Indian group is an Indian tribe; and

''(B) the members of the Indian group are eligible for the programs, services, and benefits (including privileges and immunities) provided by the United States to members of Indian tribes because of the status of those members as Indians.

''(2) INDIAN.—The term 'Indian' means a member of an Indian tribe or Indian group.

''(3) INDIAN GROUP.—The term 'Indian group' means any Indian band, pueblo, village, or community that is not acknowledged.

''(4) INDIAN TRIBE.—The term 'Indian tribe' has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

''(5) SECRETARY.—The term 'Secretary' means the Secretary of the Interior.

''(6) SERVICE POPULATION.—The term 'service population' means the population of the Tribe eligible to receive the programs, services, and benefits described in section 5(a), as determined by the Secretary under section 5(c).

''(7) STATE.—The term 'State' means the State of North Carolina.

''(8) TRIBAL ROLL.—The term 'tribal roll' means a list of individuals who have been determined by the Tribe to meet the membership requirements of the Tribe established in the constitution of the Tribe adopted November 11, 2000.

''(9) TRIBE.—The term 'Tribe' means the Lumbee Tribe of North Carolina, located in Robeson County, North Carolina, and adjoining counties in the State.

**''SEC. 4. ACKNOWLEDGMENT OF LUMBEE TRIBE.**

''(a) ACKNOWLEDGMENT.—

''(1) IN GENERAL.—The Tribe is acknowledged.

''(2) APPLICABLE LAW.—All laws (including regulations) of the United States of general applicability to Indians and Indian tribes shall apply to the Tribe and members of the Tribe.

''(b) PETITION.—Any Indian group located in Robeson County, North Carolina (or any adjoining county), the members of which are not members of the Tribe as determined by the Secretary under section 5(c), may submit to the Secretary a petition in accordance with part 83 of title 25, Code of Federal Regulations (or a successor regulation), for acknowledgement.

**''SEC. 5. SERVICES.**

''(a) IN GENERAL.—Beginning on the date of enactment of this section, the Tribe and members of the Tribe are eligible for all programs, services, and benefits (including

privileges and immunities) provided by the Federal Government to Indian tribes and members of Indian tribes.

''(b) RESERVATION.—

''(1) PROGRAMS, SERVICES, AND BENEFITS.—For the purpose of providing any program, service, or benefit described in subsection (a) to the Tribe or a member of the Tribe, the Tribe, and any member of the Tribe residing in the county of Robeson, Cumberland, Hoke, or Scotland in the State, shall be considered to be residing on or near an Indian reservation.

''(2) FEDERAL LAW.—Beginning on the date of enactment of this section, Robeson County, North Carolina, shall be considered to be the reservation of the Tribe for the purpose of any Federal law applicable to the Tribe.

''(3) NO EFFECT ON FEE OWNERSHIP.—Nothing in this subsection affects the ownership status of any fee land within the State, or the status of any right or easement in the State, in existence as of the date of enactment of this section.

''(c) DETERMINATION OF SERVICE POPULATION.—

''(1) IN GENERAL.—Not later than 1 year after the date of enactment of this section, the Secretary shall—

''(A) using the tribal roll in existence as of the date of enactment of this section, verify the population of the Tribe; and

''(B) determine the population of the Tribe eligible to receive the programs, services, and benefits described in subsection (a).

''(2) VERIFICATION.—The Secretary shall base a verification under paragraph (1)(A) only on a confirmation of compliance of members of the Tribe with membership criteria established in the constitution of the Tribe adopted November 11, 2000.

''(d) NEEDS OF TRIBE.—

''(1) IN GENERAL.—On determination of the service population, the Secretary and the Secretary of Health and Human Services shall develop, in consultation with the Tribe—

''(A) a determination of the needs of the Tribe; and

''(B) a recommended budget required to serve the Tribe.

''(2) SUBMISSION OF BUDGET REQUEST.—For each fiscal year after determination of the service population, the Secretary or the Secretary of Health and Human Services, as appropriate, shall submit to the President a recommended budget for programs, services, and benefits provided by the United States to members of the Tribe because of the status of those members as Indians (including funding recommendations for the Tribe that are based on the determination and budget described in paragraph (1)) for inclusion in the annual budget submitted by the President to Congress in accordance with section 1108 of title 31, United States Code.

**''SEC. 6. JURISDICTION.**

''(a) IN GENERAL.—Except as provided in subsection (b), the State shall exercise jurisdiction over all criminal offenses that are committed on, and all civil actions that arise on, land located in the State that is owned by, or held in trust by the United States for the benefit of, the Tribe or any member of the Tribe.

''(b) TRANSFER OF JURISDICTION.—

''(1) IN GENERAL.—After consultation with the Attorney General, the Secretary may accept, on behalf of the United States, any transfer by the State to the United States of all or any portion of the jurisdiction of the State described in subsection (a).

''(2) AGREEMENT.—A transfer of jurisdiction under paragraph (1)—

''(A) shall be subject to an agreement entered into by the Tribe and the State relating to the transfer; and

''(B) shall not take effect until at least 2 years after the date on which the agreement is entered into.

''(c) NO EFFECT ON INDIAN CHILD WELFARE ACT AGREEMENTS.—Nothing in this section affects the application of section 109 of the Indian Child Welfare Act of 1978 (25 U.S.C. 1919).

**''SEC. 7. AUTHORIZATION OF APPROPRIATIONS.**

''There are authorized to be appropriated such sums as are necessary to carry out this Act.''.

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By Ms. CANTWELL (for herself, Mr. SMITH, Mrs. MURRAY, and Mrs. FEINSTEIN):

S. 421. A bill to reauthorize and revise the Renewable Energy Production Incentive program, and for other purposes; to the Committee on Energy and Natural Resources.

Ms. CANTWELL. Mr. President, I rise today to introduce—along with my colleagues Senators SMITH, MURRAY and FEINSTEIN—the Renewable Energy Production Incentive, REPI, Reform Act.

This bill reauthorizes the REPI program, which was created as part of the 1992 National Energy Policy Act to foster greater renewable energy production and level the playing field for public power utilities, which do not qualify for renewable energy tax credits. The REPI program provides direct payments to publicly- and cooperatively-owned utilities at a rate of 1.5 cents/kWh, indexed for inflation, for electricity generated from wind, solar, certain geothermal and biomass sources.

As some of my colleagues may recall, the Senator from Oregon and I introduced a very similar bill last session, which was subsequently included in the energy bill that passed the Senate last spring. While conferees were ultimately unable to reach agreement on the broader energy bill, reauthorizing the REPI program must remain a priority as we again contemplate energy legislation during the 108th Congress.

Since this program's creation, REPI has become an important incentive for locally-owned, not-for-profit utilities to become involved in the effort to diversify our Nation's generation sources to include clean, sustainable sources of power. Since 1995, more than 36 projects in 17 States have received more than $21 million in REPI incentives and produced more than 3,000 megawatt-hours of electricity per year.

In my home State of Washington, where 55 percent of the overall energy load is served by public power, the REPI program had already helped support wood-waste and landfill gas projects, and promises to help locally-owned utilities tap into our tremendous wind resources. Already, the hills south of Kennewick, WA are home to the Nine Canyon Wind project—a 48-megawatt wind farm consisting of 37 turbines—producing enough energy to serve 12,000 households. This bill will provide continued support for these innovative projects.

The Renewable Energy Production Incentive Reform Act that my colleagues and I have introduced today will do three simple things. It will: reauthorize the program for another 10 years; direct the Department of Energy, which runs the program, to allocate funds on a more equitable basis in years in which the demand for REPI dollars far outpaces available appropriations; and clarifies that landfill gas projects and tribal governments are eligible to receive REPI funding.

One of the key challenges in developing a 21st century energy policy for this Nation is putting in place the proper incentives to add new and sustainable sources of power to the grid. My colleagues and I from the Northwest have learned this lesson well over the past few years, during which prolonged droughts have stretched to the limit the hydroelectric system that has—since the 1930s—formed the basis for our region's economic growth. The new clean energy projects the REPI program supports help relieve some of the stress on our hydro system and position my state and region for the next cycle of innovation in energy technology.

I look forward to working with my cosponsors during this session to ensure this small but important program is reauthorized—whether as stand-alone legislation or part of a broader energy bill. I believe we as a Nation now stand on the cusp of a revolution in clean energy technology. The Renewable Energy Production Incentive program is key in helping public power systems participate, as we work to put in place an energy policy that will meet the needs of our 21st Century economy.

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By Mr. BREAUX:

S. 422. A bill to amend the Tariff Act of 1930 to modify the provisions relating to drawback claims, and for other purposes; to the Committee on Finance.

Mr. BREAUX. Mr. President, I would like to clarify a provision of the omnibus appropriations bill that was included as a result of legislation I have been working on since the last Congress. In the transportation section of the omnibus, language was included to help provide for tighter restrictions on the waiver process currently in place at the Transportation Security Administration. Specifically, with this language I was seeking to make sure that venues, events and stadiums across the country are safe for the thousands in attendance. However, there are certain airships which are particularly well suited to assist law enforcement in providing sustained airborne surveillance over and around stadium or other events. It was my intention when crafting this language that blimps operating in this capacity should not be prevented from applying for a waiver from TSA. In fact, under the legislation, the Secretary may grant a waiver for blimps which are being operated for event safety or security, including those which are capable of providing

immediate on-call airborne security camera surveillance services at the stadium or event. It was never my intention to prevent this type of security enhancement from being utilized because these types of airships can and do provide significant security protections for large venue events. I am in possession of a letter from the city of Anaheim which states that these air operations ''were a major component of the security plan'' as they hosted the 2002 World Series. I ask unanimous consent that this be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

ANAHEIM POLICE DEPARTMENT,
*Anaheim, CA, November 19, 2002.*

JAMES HILTON,
*Director of Operations, The Lightship Group, Orlando, FL.*

DEAR MR. HILTON: As you know, the City of Anaheim hosted the 2002 Major League Baseball World Series and the Anaheim Police Department was charged with providing security during the games.

Air operations were a major component of the security plan. Carl Harbuck, Chief Pilot for the Saturn airship, facilitated a joint aerial plan with our helicopter pilots. Carl arranged for one of our pilots to fly in your airship during each of the four games played in Anaheim. Having one Anaheim officer in your airship, along with the officers in our helicopter, proved to be an effective combination. The Anahiem officer in the airship was able to make observations and convey them to our helicopter crewmembers and officers on the ground in a timely, effective manner. Each of our pilots assigned to your crew during the games had the highest praise for the members of your airship operations team. The members were very professional and informative on how they conduct operations. As you know, having insight in another work mission facilitates a smooth and safe environment for all participants.

Please convey my sincere appreciation to Carl and Pilot Jeff Capek, as well as all your team members, for their hospitality. Let me extend an invitation to your pilots to observe our air operations. They are welcome any time.

Sincerely,

ROGER A. BAKER,
*Chief of Police.*

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By Ms. COLLINS (for herself and Mr. FEINGOLD):

S. 423. A bill to promote health care coverage parity for individuals participating in legal recreational activities or legal transportation activities; to the Committee on Health, Education, Labor, and Pensions.

Ms. COLLINS. Mr. President, I am pleased to join with my colleague from Wisconsin, Senator FEINGOLD, in introducing legislation to prohibit health insurers from denying benefits to plan participants if they are injured while engaging in legal recreational activities like skiing or horseback riding.

Among the many rules that were issued at the end of the Clinton Administration was one that was intended to ensure non-discrimination in health coverage in the group market. This rule was issued jointly on January 8, 2001, by the Department of Labor, the Internal Revenue Service and the Health Care Financing Administration—now the Centers for Medicare and Medicaid Services—in accordance with the Health Insurance Portability and Accountability Act, HIPAA, of 1996.

While I was pleased that the rule prohibits health plans and issuers from denying coverage to individuals who engage in certain types of recreational activities, such as skiing, horseback riding, snowmobiling or motorcycling, I am extremely concerned that it would allow insurers to deny health benefits for an otherwise covered injury that results from participation in these activities.

The rule states that: ''While a person cannot be excluded from a plan for engaging in certain recreational activities, benefits for a particular injury can, in some cases, be excluded based on the source of the injury.'' A plan could, for example, include a general exclusion for injuries sustained while doing a specified list of recreational activities, even though treatment for those injuries, a broken arm for instance, would have been covered under the plan if the individual had tripped and fallen.

Because of this loophole, an individual who was injured while skiing or running could be denied health care coverage, while someone who is injured while drinking and driving a car would be protected.

This clearly is contrary to Congressional intent. One of the purposes of HIPAA was to prohibit plans and issuers from establishing eligibility rules for health coverage based on certain health-related factors, including evidence of insurability. To underscore that point, the conference report language stated that ''the inclusion of evidence of insurability in the definition of health status is intended to ensure, among other things, that individuals are not excluded from health care coverage due to their participation in activities such as motorcycling, snowmobiling, all-terrain vehicle riding, horseback riding, skiing and other similar activities.'' The conference report also states that ''this provision is meant to prohibit insurers or employers from excluding employees in a group from coverage or charging them higher premiums based on their health status and other related factors that could lead to higher health costs.''

Millions of Americans participate in these legal and common recreational activities which, if practiced with appropriate precautions, do not significantly increase the likelihood of serious injury. Moreover, in enacting HIPAA, Congress simply did not intend that people would be allowed to purchase health insurance only to find out, after the fact, that they have no coverage for an injury resulting from a common recreational activity. If this rule is allowed to stand, millions of Americans will be forced to forgo recreational activities that they currently enjoy lest they have an accident and find out that they are not covered for needed care resulting from that accident.

The legislation that we are introducing today will clarify that individuals participating in activities routinely enjoyed by millions of Americans cannot be denied access to health care coverage or health benefits as a result of their activities, and I urge all of our colleagues to join us as cosponsors.

Mr. FEINGOLD. Mr. President, I rise today with my colleague from Maine to introduce legislation to promote health care parity for individuals participating in legal transportation and recreational activities. This legislation addresses concerns that I have been hearing from a wide range of Wisconsinites about a loophole caused by the Department of Health and Human Services' ruling that makes it possible for health care coverage to be denied to those who are injured while participating in these kinds of legal activities.

In January of 2001, the Health Care Finance administration released regulations governing the Health Care Insurance Accountability Act of 1996, also known as HIPAA. As part of this act, Congress intended to ban health insurance discrimination against those participating in legal transportation or recreational activities. Ironically, it appears that the rules written in response to this legislation may have had precisely the opposite effect.

These new regulations at first state that an employer cannot refuse health care coverage to an employee on the basis of participation in recreational activities. But they then go on to say that health care benefits can be denied for injuries sustained in connection with those recreational activities.

Not only does this ruling make little sense, it flies in the face of what Congress intended. In a colloquy between Senators Moseley-Braun and Kassebaum, Senator Mosely-Braun stated, ''As I understand it, this formulation is intended to ensure that, among other things, participants and beneficiaries are not excluded from health care coverage because they participate in activities such as motorcycling, skiing, horseback riding, snowmobiling, or other similar activities.''

And Senator Kassebaum simply said ''The Senator from Illinois is correct.''

But the bureaucrats turned around and permitted the denial of benefits for any injury sustained while participating in these legal activities. This ruling makes no sense. Because of this loophole, someone who participates in motorcycling, snowmobiling, running or walking could be denied health care coverage, while someone who is injured while drinking and driving a car would be protected.

Congress voted 98–0 in favor of the HIPAA legislation that included this language. We must close the loophole that the interpretation of this provision has created.

From riding Harley Davidson motorcycles to the visiting the Snowmobile Hall of Fame in St. Germain, these activities are part of Wisconsin's heritage and economy. It makes no sense that they would be singled out for this unfair treatment.

Millions of Americans rely on motorcycles for their transportation to work. Individuals should not singled out just because they choose a different mode of transportation to go to work.

I urge my colleagues to cosponsor this legislation and provide health care parity for individuals participating in legal transportation and recreational activities.

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By Mr. BINGAMAN (for himself, Mr. INOUYE, Mr. CAMPBELL, and Mr. DASCHLE):

S. 424. A bill to establish, reauthorize, and improve energy programs relating to Indian tribes; to the Committee on Indian Affairs.

Mr. BINGAMAN. Mr. President, today I am introducing a bipartisan bill to address the energy needs of Native Americans in this country. In doing so, I hope to build upon the widespread support for these provisions that was evident during the energy bill debate in the 107th Congress. That support continues as I am pleased to note that Senators INOUYE, CAMPBELL and DASCHLE are original cosponsors of this measure. I'd like to specifically recognize the work of Senator INOUYE and his staff in putting together this bill. I appreciate their significant contribution to its content.

Energy matters concerning Native Americans raise two different issues that warrant attention. First, tribal lands contain significant and diverse energy resources and therefore have a role to play in the area of national energy policy. Second, there continues to be a lack of basic energy infrastructure on a number of reservations.

With respect to the first issue, a significant share of domestic energy resources are located on Indian lands. Over the last 20 years, Indian lands have contributed approximately 11 percent of the Nation's onshore oil and natural gas production, and 11 percent of its coal production. This level of contribution could increase in the future given available supplies of fossil energy resources and the potential development of significant renewable energy resources. The Bureau of Indian Affairs estimates that there are almost 90 reservations with energy resource potential, including oil and gas, coal and coal bed methane, wind, and geothermal resources. Developing these resources, particularly those such as wind power that have the capability to enable tribes to generate electricity on-reservation, requires dealing with current obstacles such as limited transmission capacity.

As for on-reservation energy needs, there is much to be done. A recent Department of Energy report estimated that 14.2 percent of all Native American homes on reservations have no access to electricity compared to just 1.4 percent of all U.S. households. The situation is especially acute on the Navajo Reservation where approximately 37 percent of Navajo homes do not have electricity. Moreover, the average Indian household spends 4 percent of its income on electricity, twice that of the average for all U.S. households. The high cost of energy is particularly harmful to reservation communities, where unemployment averages 43 percent. Another 33 percent who live in and around those communities earn wages below the poverty level. Given these statistics, it is clear that Indian tribes with substantial energy resources and high unemployment rates have a critical interest in enhancing their participation in the development of energy resources as well as providing electrical services to their reservation communities.

The bill being introduced today is a comprehensive approach to the energy issues facing Native Americans. I believe it will assist tribes to develop and utilize available energy supplies, thereby improving on-reservation quality of life while also assisting tribes as they continue to move towards economic self-sufficiency. I look forward to working with my colleagues on this bill and am hopeful that this important legislation can be enacted this year.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 424

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) SHORT TITLE.—This Act may be cited as the ''Tribal Energy Self-Sufficiency Act''.

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:



**SEC. 2. DEFINITION OF SECRETARY.**

In this Act, the term ''Secretary'' means the Secretary of Energy.

**TITLE I—INDIAN ENERGY**

**SEC. 101. COMPREHENSIVE INDIAN ENERGY PROGRAM.**

Title XXVI of the Energy Policy Act of 1992 (25 U.S.C. 3501 et seq.) is amended by adding after section 2606 the following:

**''SEC. 2607. COMPREHENSIVE INDIAN ENERGY PROGRAM.**

''(a) DEFINITIONS.—In this section:

''(1) DIRECTOR.—The term 'Director' means the Director of the Office of Indian Energy Policy and Programs of the Department of Energy.

''(2) INDIAN LAND.—The term 'Indian land' means—

''(A) any land within the limits of an Indian reservation, pueblo, or rancheria;

''(B) any land not within the limits of an Indian reservation, pueblo, or rancheria, title to which is held—

''(i) in trust by the United States for the benefit of an Indian tribe;

''(ii) by an Indian tribe subject to restriction by the United States against alienation; or

''(iii) by a dependent Indian community; and

''(C) land conveyed to an Alaska Native corporation under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.).

''(b) INDIAN ENERGY EDUCATION PLANNING AND MANAGEMENT ASSISTANCE.—

''(1) IN GENERAL.—The Director shall establish programs within the Office of Indian Energy Policy and Programs to assist Indian tribes in meeting energy education, research and development, planning, and management needs.

''(2) GRANTS.—In carrying out this section, the Director may provide grants, on a competitive basis, to an Indian tribe for use in carrying out—

''(A) renewable energy, nonrenewable energy, energy efficiency, and energy conservation programs;

''(B) studies and other activities supporting tribal acquisition of energy supplies, services, and facilities;

''(C) planning, construction, development, operation, maintenance, and improvement of tribal electrical generation, transmission, and distribution facilities located on Indian land; and

''(D) development, construction, and interconnection of electric power transmission facilities located on Indian land with other electric transmission facilities.

''(3) FORMULA.—

''(A) IN GENERAL.—The Director may develop, in consultation with Indian tribes, a formula for providing grants under this section.

''(B) CONSIDERATIONS.—In developing a formula under subparagraph (A), the Director may take into account—

''(i) the number of acres of Indian land owned by an Indian tribe;

''(ii) the number of households on the Indian land of an Indian tribe;

''(iii) the number of households on the Indian land of an Indian tribe that have no electric service or are underserved; and

''(iv) financial or other assets available to the Indian tribe from any source.

''(4) PRIORITY.—In providing a grant under this subsection, the Director shall give priority to an application received from an Indian tribe with inadequate electric service (as determined by the Director).

''(5) REGULATIONS.—The Secretary may promulgate such regulations as the Secretary determines are necessary to carry out this subsection.

''(6) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the

Secretary to carry out this section $20,000,000 for each of fiscal years 2003 through 2010.

''(c) LOAN GUARANTEE PROGRAM.—

''(1) AUTHORITY.—Subject to paragraph (3), the Secretary may provide loan guarantees (as defined in section 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a) for not more than 90 percent of the unpaid principal and interest due on any loan made to any Indian tribe for—

''(A) energy development (including the planning, development, construction, and maintenance of electrical generation plants); and

''(B) for transmission and delivery mechanisms for electricity produced on Indian land.

''(2) LENDERS.—A loan guaranteed under this subsection shall be made by—

''(A) a financial institution subject to examination by the Secretary; or

''(B) an Indian tribe, from funds of the Indian tribe.

''(3) LIMITATION ON AMOUNT.—The aggregate outstanding amount guaranteed by the Secretary of Energy at any time under this subsection shall not exceed $2,000,000,000.

''(4) REGULATIONS.—The Secretary may promulgate such regulations as the Secretary determines are necessary to carry out this subsection.

''(5) FUNDING.—

''(A) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this subsection.

''(B) AVAILABILITY.—Funds made available under subparagraph (A) shall remain available until expended.

''(d) INDIAN ENERGY PREFERENCE.—

''(1) IN GENERAL.—A Federal agency or department may give, in the purchase of electricity, oil, gas, coal, or any other energy product or byproduct, preference in the purchase to an energy and resource production enterprise, partnership, corporation, or other type of business organization the majority of the interest in which is owned and controlled by an Indian tribe.

''(2) PRICE OF PRODUCTS.—In carrying out this subsection, a Federal agency or department shall—

''(A) pay not more than the prevailing market price for an energy product or byproduct; and

''(B) shall obtain not less than existing market terms and conditions.''.

**SEC. 102. OFFICE OF INDIAN ENERGY POLICY AND PROGRAMS.**

(a) IN GENERAL.—Title II of the Department of Energy Organization Act (7 U.S.C. 7131 et seq.) is amended by adding at the end the following:

**''SEC. 217. OFFICE OF INDIAN ENERGY POLICY AND PROGRAMS.**

''(a) ESTABLISHMENT.—

''(1) IN GENERAL.—There is established within the Department an Office of Indian Energy Policy and Programs (referred to in this section as the 'Office').

''(2) DIRECTOR.—The Office shall be headed by a Director, who shall be—

''(A) appointed by the Secretary; and

''(B) compensated at a rate equal to that of level IV of the Executive Schedule under section 5315 of title 5, United States Code.

''(b) DUTIES OF DIRECTOR.—The Director shall—

''(1) in accordance with Federal policies for the promotion of tribal sovereignty and self-determination, provide, direct, foster, coordinate, and implement energy planning, education, management, conservation, and delivery programs of the Department that—

''(A) promote tribal energy efficiency and use;

''(B) modernize and develop, for the benefit of Indian tribes, tribal energy and economic infrastructure relating to natural resource development and electrification;

''(C) lower or stabilize energy costs; and

''(D) electrify tribal land and the homes of tribal members; and

''(2) carry out the duties assigned to the Secretary or the Director under title XXVI of the Energy Policy Act of 1992 (25 U.S.C. 3501 et seq.).''.

(b) CONFORMING AMENDMENTS.—

(1) AUTHORIZATION OF APPROPRIATIONS.—Section 2603 of the Energy Policy Act of 1992 (25 U.S.C. 3503) is amended by striking subsection (c) and inserting the following:

''(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary to carry out this section $10,000,000 for each of fiscal years 2003 through 2010.''.

(2) TABLE OF CONTENTS.—The table of contents of the Department of Energy Organization Act (42 U.S.C. prec. 7101) is amended—

(A) in the item relating to section 209, by striking ''Section'' and inserting ''Sec.''; and

(B) by striking the items relating to sections 213 through 216 and inserting the following:

''Sec. 213. Establishment of policy for National Nuclear Security Administration.
''Sec. 214. Establishment of security, counterintelligence, and intelligence policies.
''Sec. 215. Office of Counterintelligence.
''Sec. 216. Office of Intelligence.
''Sec. 217. Office of Indian Energy Policy and Programs.''.

(3) EXECUTIVE SCHEDULE.—Section 5315 of title 5, United States Code, is amended by inserting ''Director, Office of Indian Energy Policy and Programs, Department of Energy.'' after ''Inspector General, Department of Energy.''.

**SEC. 103. SITING OF ENERGY FACILITIES ON TRIBAL LAND.**

(a) DEFINITIONS.—In this section:

(1) INDIAN TRIBE.—

(A) IN GENERAL.—The term ''Indian tribe'' means any Indian tribe, band, nation, or other organized group or community that is recognized as being eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(B) EXCLUSIONS.—The term ''Indian tribe'' does not include any Regional Corporation or Native Corporation (as those terms are defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602)).

(2) INTERESTED PARTY.—The term ''interested party'' means a State or other person the interests of which could be adversely affected by a decision of an Indian tribe to grant a lease or right-of-way in accordance with to this section.

(3) PETITION.—The term ''petition'' means a written request submitted to the Secretary for the review of an action (including inaction) of an Indian tribe that is claimed to be in violation of tribal regulations approved under subsection (f).

(4) RESERVATION.—The term ''reservation'' means—

(A) with respect to a reservation in a State other than the State of Oklahoma, all land that has been set aside or that has been acknowledged as having been set aside by the United States for the use of an Indian tribe, the exterior boundaries of which are more particularly defined in a final tribal treaty, agreement, executive order, Federal statute, secretarial order, or judicial determination; and

(B) with respect to a reservation in the State of Oklahoma, all land that is—

(i) within the jurisdictional area of an Indian tribe; and

(ii) within the boundaries of the last reservation of the Indian tribe that was established by treaty, executive order, or secretarial order.

(5) SECRETARY.—The term 'Secretary' means the Secretary of the Interior.

(6) TRIBAL LAND.—The term 'tribal land' means any—

(A) tribal trust land; or

(B) other land owned by an Indian tribe that is located within the reservation of the Indian tribe.

(b) LEASES INVOLVING ELECTRIC GENERATION, TRANSMISSION, DISTRIBUTION, OR PROCESSING FACILITIES.—

(1) IN GENERAL.—An Indian tribe may grant a lease of tribal land for—

(A) an electric generation, transmission, or distribution facility; or

(B) a facility to refine or otherwise process renewable or nonrenewable energy resources developed on tribal land.

(2) APPROVAL NOT REQUIRED.—A lease described in paragraph (1) shall not require the approval of the Secretary if—

(A) the lease is executed under tribal regulations approved by the Secretary under this subsection; and

(B) the term of the lease does not exceed 30 years.

(c) RIGHTS-OF-WAY FOR ELECTRIC GENERATION, TRANSMISSION, DISTRIBUTION, OR PROCESSING FACILITIES.—An Indian tribe may grant a right-of-way over tribal land for a pipeline or an electric transmission or distribution line without separate approval by the Secretary if—

(1) the right-of-way is executed under and complies with tribal regulations approved by the Secretary;

(2) the term of the right-of-way does not exceed 30 years; and

(3) the pipeline or electric transmission or distribution line serves—

(A) an electric generation, transmission or distribution facility located on tribal land; or

(B) a facility located on tribal land that refines or otherwise processes renewable or nonrenewable energy resources developed on tribal land.

(d) VALIDITY OF LEASES AND RIGHTS-OF-WAY.—No lease or right-of-way granted under this section shall be valid unless authorized in compliance with applicable tribal regulations approved under subsection (f).

(e) RENEWALS.—Leases or rights-of-way entered into under this section may be renewed at the discretion of the Indian tribe making the grant of the lease or right-of-way in accordance with this section.

(f) TRIBAL REGULATION REQUIREMENTS.—

(1) IN GENERAL.—The Secretary shall approve or disapprove tribal regulations required under this subsection.

(2) CONDITIONS FOR APPROVAL.—The Secretary shall approve tribal regulations described in paragraph (1) if the Secretary determines that the regulations—

(A) are comprehensive in nature;

(B) include provisions that address—

(i) securing necessary information from the lessee or right-of-way applicant;

(ii) the term of any conveyance;

(iii) amendments and renewals;

(iv) consideration for a lease or right-of-way;

(v) technical or other relevant requirements;

(vi) requirements for environmental review as described in paragraph (3);

(vii) requirements for complying with all applicable environmental laws;

(viii) the identification of final approval authority; and

(ix) the provision of public notification of final approvals; and

(C) establish a process for consultation with any affected States concerning potential off-reservation impacts associated with

a lease or right-of-way proposed to be granted.

(3) ENVIRONMENTAL REVIEW PROCESS.—An Indian tribe shall establish an environmental review process that includes—

(A) an identification and evaluation of all significant environmental impacts of the proposed action as compared to a no action alternative;

(B) identification of proposed mitigation;

(C) a process for ensuring that the public is informed of and has an opportunity to comment on the proposed action prior to tribal approval of the lease or right-of-way; and

(D) sufficient administrative support and technical capability to carry out the environmental review process.

(4) PERIOD FOR APPROVAL OR DISAPPROVAL.—

(A) IN GENERAL.—Not later than 270 days after the date of submission by an Indian tribe to the Secretary of tribal regulations under this subsection, the Secretary—

(i) may provide notice and an opportunity for public comment on the regulations; and

(ii) shall approve or disapprove the regulations.

(B) FORM OF DISAPPROVAL.—Any disapproval by the Secretary of tribal regulations described in subparagraph (A) shall be accompanied by—

(i) written documentation that describes the basis for the disapproval; and

(ii) a description of changes or other actions required to address concerns of the Secretary.

(C) EXTENSION.—The Secretary may extend the deadline specified in subparagraph (A) for an Indian tribe after consultation with the Indian tribe.

(5) DUTIES OF INDIAN TRIBE.—If an Indian tribe executes a lease or right-of-way in accordance with tribal regulations required under this subsection, the Indian tribe shall provide to the Secretary—

(A) a copy of the lease or right-of-way document (including all amendments and renewals to the lease or document); and

(B) in the case of tribal regulations or a lease or right-of-way that permits payment to be made directly to the Indian tribe, documentation of the payments sufficient to enable the Secretary to discharge the trust responsibility of the United States as appropriate under applicable law.

(6) NO LIABILITY FOR LOSSES.—The United States shall not be liable for any loss sustained by any party (including any Indian tribe or member of an Indian tribe) to a lease executed in accordance with tribal regulations under this subsection.

(7) VIOLATIONS.—

(A) PETITIONS.—

(i) IN GENERAL.—An interested party may, after exhaustion of tribal remedies, submit to the Secretary, in a timely manner, a petition for the review of compliance of an Indian tribe with any tribal regulations approved under this subsection.

(ii) DEADLINE FOR CONDUCT OF REVIEW.—The Secretary shall conduct any such review under clause (i) as the Secretary determines to be necessary not later than 90 days after the date of receipt of a petition described in clause (i).

(B) DETERMINATION OF VIOLATION.—If, on completion of a review of tribal regulations under subparagraph (A), the Secretary determines that the regulations were violated, the Secretary may take such action as the Secretary determines to be necessary to remedy the violation, including—

(i) rescinding or holding any applicable lease or right-of-way in abeyance until the violation is cured; and

(ii)(I) rescinding the approval of the tribal regulations; and

(II) reassuming responsibility for approval of leases or rights-of-way associated with the facilities covered by those leases or rights-of-way.

(C) ACTIONS OF SECRETARY.—If the Secretary seeks to remedy a violation described in subparagraph (A), the Secretary shall—

(i) make a written determination with respect to the regulations that have been violated;

(ii) provide to the applicable Indian tribe a written notice of the violation and a copy of the written determination described in clause (i); and

(iii) prior to the exercise of any remedy or the rescission of the approval of the regulations involved and reassumption of responsibility for approval of any lease or right-of-way, provide for the Indian tribe a hearing and a reasonable opportunity to cure the alleged violation.

(D) APPEAL.—An Indian tribe that is determined by the Secretary under this paragraph to have violated tribal regulations under this subsection shall retain all rights to appeal as provided by regulations promulgated by the Secretary.

(g) AGREEMENTS.—

(1) IN GENERAL.—An agreement between an Indian tribe and a business entity that is directly associated with the development of an electric generation, transmission, or distribution facility, or a facility to refine or otherwise process renewable or nonrenewable energy resources developed on tribal land, shall not require the separate approval of the Secretary in accordance with section 2103 of the Revised Statutes (25 U.S.C. 81) if the activity that is the subject of the agreement has been the subject of an environmental review process under subsection (f)(3).

(2) NO LIABILITY FOR LOSS.—The United States shall not be liable for any loss sustained by any party (including any Indian tribe or member of an Indian tribe) associated with an agreement entered into under this subsection.

(h) NO EFFECT ON OTHER LAW.—Nothing in this section modifies or otherwise affects the applicability of any provision of—

(1) the Act of May 11, 1938 (commonly known as the ''Indian Mineral Leasing Act of 1938'') (25 U.S.C. 396a et seq.);

(2) the Indian Mineral Development Act of 1982 (25 U.S.C. 2101 et seq.);

(3) the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.); or

(4) any environmental law of the United States.

**SEC. 104. INDIAN MINERAL DEVELOPMENT REVIEW.**

(a) IN GENERAL.—The Secretary of the Interior shall conduct a review of the activities that, as of the date of enactment of this Act, have been carried out by governments of Indian tribes under the Indian Mineral Development Act of 1982 (25 U.S.C. 2101 et seq.).

(b) REPORT.—Not later than 1 year after the date of enactment of this Act, the Secretary of the Interior shall submit to the Committee on Indian Affairs and the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives a report that describes—

(1) the results of the review;

(2) recommendations to ensure that Indian tribes have the opportunity to develop nonrenewable energy resources; and

(3) an analysis of the barriers to the development of energy resources on Indian land, including Federal policies and regulations and recommendations regarding the removal of those barriers.

(c) CONSULTATION.—In developing the report and recommendations under this section, the Secretary of the Interior shall consult with Indian tribes on a government-to-government basis.

**SEC. 105. RENEWABLE ENERGY STUDY.**

(a) IN GENERAL.—Not later than 2 years after the date of enactment of this Act, and once every 2 years thereafter, the Secretary shall submit to the Committee on Energy and Natural Resources and the Committee on Indian Affairs of the Senate and the Committee on Energy and Commerce and the Committee on Resources of the House of Representatives a report that—

(1) describes energy consumption and renewable energy development potential on Indian land;

(2) identifies barriers to the development of renewable energy by Indian tribes, including Federal policies and regulations; and

(3) makes recommendations regarding the removal of those barriers.

(b) CONSULTATION.—In developing the report and recommendations under this section, the Secretary shall consult with Indian tribes on a government-to-government basis.

**SEC. 106. FEDERAL POWER MARKETING ADMINISTRATIONS.**

Title XXVI of the Energy Policy Act of 1992 (25 U.S.C. 3501 et seq.) (as amended by section 101) is amended by adding at the end the following:

**''SEC. 2608. FEDERAL POWER MARKETING ADMINISTRATIONS.**

''(a) DEFINITIONS.—In this section:

''(1) ADMINISTRATOR.—The term 'Administrator' means—

''(A) the Administrator of the Bonneville Power Administration; and

''(B) the Administrator of the Western Area Power Administration.

''(2) POWER MARKETING ADMINISTRATION.—The term 'power marketing administration' means—

''(A) the Bonneville Power Administration;

''(B) the Western Area Power Administration; and

''(C) any other power administration the power allocation of which is used by or for the benefit of an Indian tribe located in the service area of the administration.

''(b) ENCOURAGEMENT OF INDIAN TRIBAL ENERGY DEVELOPMENT.—Each Administrator shall encourage Indian tribal energy development by taking such actions as are appropriate, including administration of programs of the Bonneville Power Administration and the Western Area Power Administration, in accordance with this section.

''(c) ACTION BY THE ADMINISTRATOR.—In carrying out this section—

''(1) each Administrator shall consider the unique relationship that exists between the Federal Government and Indian tribes;

''(2) power allocations from the Western Area Power Administration to Indian tribes may be used to firm Indian-owned renewable energy projects for delivery of loads located on Indian land; and

''(3) the Administrator of the Western Area Power Administration may purchase renewable or nonrenewable power from Indian tribes to meet the firming requirements of the Western Area Power Administration.

''(d) ASSISTANCE FOR TRANSMISSION SYSTEM USE.—

''(1) IN GENERAL.—An Administrator may provide technical assistance to Indian tribes seeking to use the high-voltage transmission system for delivery of electric power.

''(2) COSTS.—The costs of technical assistance provided under paragraph (1) shall be funded—

''(A) by the Administrator using nonreimbursable funds appropriated for that purpose; or

''(B) by the applicable Indian tribes.

''(3) PRIORITY FOR ASSISTANCE FOR TRANSMISSION STUDIES.—In providing discretionary

assistance to Indian tribes under paragraph (1), each Administrator shall give priority in funding to Indian tribes that have limited financial capability to acquire that assistance.

''(e) POWER ALLOCATION STUDY.—

''(1) IN GENERAL.—Not later than 2 years after the date of enactment of this section, the Secretary of Energy shall submit to the Committee on Energy and Natural Resources and the Committee on Indian Affairs of the Senate and the Committee on Energy and Commerce and the Committee on Resources of the House of Representatives a report that—

''(A) describes the use by Indian tribes of Federal power allocations of the Western Area Power Administration (or power sold by the Southwestern Power Administration) and the Bonneville Power Administration to or for the benefit of Indian tribes in service areas of those administrations; and

''(B) identifies—

''(i) the quantity of power allocated to Indian tribes by the Western Area Power Administration;

''(ii) the quantity of power sold to Indian tribes by other power marketing administrations; and

''(iii) barriers that impede tribal access to and use of Federal power, including an assessment of opportunities—

''(I) to remove those barriers; and

''(II) improve the ability of power marketing administrations to facilitate the use of Federal power by Indian tribes.

''(2) CONSULTATION.—In developing the report under paragraph (1), each power marketing administration shall consult with Indian tribes on a government-to-government basis.

''(f) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary of Energy to carry out this section $750,000 for each of fiscal years 2003 through 2013.''.

**SEC. 107. FEASIBILITY STUDY FOR COMBINED WIND AND HYDROPOWER DEMONSTRATION PROJECT.**

(a) STUDY.—The Secretary, in coordination with the Secretary of the Army and the Secretary of the Interior, shall conduct a study of the cost and feasibility of developing a demonstration project that would use wind energy generated by Indian tribes and hydropower generated by the Army Corps of Engineers on the Missouri River to supply firming power to the Western Area Power Administration.

(b) SCOPE OF STUDY.—The study shall—

(1) determine the feasibility of the blending of wind energy and hydropower generated from the Missouri River dams operated by the Army Corps of Engineers;

(2) review historical purchase requirements and projected purchase requirements for firming and the patterns of availability and use of firming energy;

(3) assess the wind energy resource potential on tribal land and projected cost savings through a blend of wind and hydropower over a 30-year period;

(4) include a preliminary interconnection study and a determination of resource adequacy of the Upper Great Plains Region of the Western Area Power Administration;

(5) determine seasonal capacity needs and associated transmission upgrades for integration of tribal wind generation; and

(6) include an independent tribal engineer as a study team member.

(c) REPORT.—Not later than 1 year after the date of enactment of this Act, the Secretary and Secretary of the Army shall submit to Congress a report that describes the results of the study, including—

(1) an analysis of the potential energy cost savings to the customers of the Western Area Power Administration through the blend of wind and hydropower;

(2) an evaluation of whether a combined wind and hydropower system can reduce reservoir fluctuation, enhance efficient and reliable energy production, and provide Missouri River management flexibility;

(3) recommendations for a demonstration project that could be carried out by the Western Area Power Administration in partnership with an Indian tribal government or tribal government energy consortium to demonstrate the feasibility and potential of using wind energy produced on Indian land to supply firming energy to the Western Area Power Administration or any other Federal power marketing agency; and

(4) an identification of—

(A) the economic and environmental benefits to be realized through such a Federal-tribal partnership; and

(B) the manner in which such a partnership could contribute to the energy security of the United States.

(d) CONSULTATION.—In developing the report and recommendations under this section, the Secretary and the Secretary of the Army shall consult with applicable Indian tribes on a government-to-government basis.

(e) FUNDING.—

(1) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $500,000, to remain available until expended.

(2) NONREIMBURSABILITY OF COSTS.—All costs incurred by the Western Area Power Administration in carrying out this section shall be nonreimbursable.

**SEC. 108. TRANSMISSION LINE DEMONSTRATION PROJECT.**

The Dine Power Authority, an enterprise of the Navajo Nation, shall be eligible to receive grants and other assistance under the demonstration program authorized by section 2603 of the Energy Policy Act of 1992 (25 U.S.C. 3503) for activities associated with the development of a transmission line from the Four Corners Area to southern Nevada, including related power generation opportunities.

## TITLE II—RENEWABLE ENERGY AND RURAL CONSTRUCTION GRANTS

**SEC. 201. RENEWABLE ENERGY PRODUCTION INCENTIVE.**

(a) INCENTIVE PAYMENTS.—Section 1212(a) of the Energy Policy Act of 1992 (42 U.S.C. 13317(a)) is amended in the third and fourth sentences by striking ''payment and which satisfies'' and all that follows through ''Secretary shall establish.'' and inserting the following: ''payment. The Secretary shall establish other procedures necessary for efficient administration of the program. The Secretary shall not establish any criteria or procedures that have the effect of assigning to proposals a higher or lower priority for eligibility or allocation of appropriated funds on the basis of the energy source proposed.''.

(b) QUALIFIED RENEWABLE ENERGY FACILITY.—Section 1212(b) of the Energy Policy Act of 1992 (42 U.S.C. 13317(b)) is amended—

(1) by striking ''a State or any political'' and all that follows through ''nonprofit electrical cooperative'' and inserting the following: ''a nonprofit electrical cooperative, a public utility, a State, territory, or possession of the United States, the District of Columbia (or a political subdivision of a State, territory, or possession or the District of Columbia), or an Indian tribal government (or subdivision of an Indian tribal government),''; and

(2) by inserting ''landfill gas, incremental hydropower, ocean'' after ''wind, biomass,''.

(c) ELIGIBILITY WINDOW.—Section 1212(c) of the Energy Policy Act of 1992 (42 U.S.C. 13317(c)) is amended by striking ''during the 10-fiscal year period beginning with the first full fiscal year occurring after the enactment of this section'' and inserting ''before October 1, 2013''.

(d) PAYMENT PERIOD.—Section 1212(d) of the Energy Policy Act of 1992 (42 U.S.C. 13317(d)) is amended in the second sentence by inserting ''or in which the Secretary determines that all necessary Federal and State authorizations have been obtained to begin construction of the facility'' after ''eligible for such payments''.

(e) AMOUNT OF PAYMENT.—Section 1212(e)(1) of the Energy Policy Act of 1992 (42 U.S.C. 13317(e)(1)) is amended in the first sentence by inserting ''landfill gas, incremental hydropower, ocean'' after ''wind, biomass,''.

(f) TERMINATION OF AUTHORITY.—Section 1212(f) of the Energy Policy Act of 1992 (42 U.S.C. 13317(f)) is amended by striking ''the expiration of'' and all that follows through ''of this section'' and inserting ''September 30, 2023''.

(g) INCREMENTAL HYDROPOWER; AUTHORIZATION OF APPROPRIATIONS.—Section 1212 of the Energy Policy Act of 1992 (42 U.S.C. 13317) is amended by striking subsection (g) and inserting the following:

''(g) INCREMENTAL HYDROPOWER.—

''(1) DEFINITION OF INCREMENTAL HYDROPOWER.—In this subsection, the term 'incremental hydropower' means additional generating capacity achieved from increased efficiency or an addition of new capacity at a hydroelectric facility in existence on the date of enactment of this paragraph.

''(2) PROGRAMS.—Subject to subsection (h)(2), if an incremental hydropower program meets the requirements of this section, as determined by the Secretary, the incremental hydropower program shall be eligible to receive incentive payments under this section.

''(h) AUTHORIZATION OF APPROPRIATIONS.—

''(1) IN GENERAL.—Subject to paragraph (2), there are authorized to be appropriated such sums as are necessary to carry out this section for each of fiscal years 2003 through 2023.

''(2) LIMITATION ON FUNDS USED FOR INCREMENTAL HYDROPOWER PROGRAMS.—Not more than 30 percent of the amounts made available under paragraph (1) shall be used to carry out programs described in subsection (g)(2).

''(3) AVAILABILITY OF FUNDS.—Funds made available under paragraph (1) shall remain available until expended.''.

## TITLE III—ENERGY EFFICIENCY AND ASSISTANCE TO LOW-INCOME CONSUMERS

**SEC. 301. LOW-INCOME COMMUNITY ENERGY EFFICIENCY PILOT PROGRAM.**

(a) DEFINITION OF INDIAN TRIBE.—

(1) IN GENERAL.—In this section, the term ''Indian tribe'' means any Indian tribe, band, nation, or other organized group or community that is recognized as being eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(2) INCLUSIONS.—In this section, the term ''Indian tribe'' includes an Alaskan Native village, Regional Corporation, and Village Corporation (as defined in or established under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.)).

(b) GRANTS TO LOCAL GOVERNMENT, NONPROFIT, AND TRIBAL ENTITIES.—The Secretary may provide grants to units of local government, private, nonprofit community development organizations, and tribal economic development entities for use in—

(1) improving energy efficiency;

(2) identifying and developing alternative renewable and distributed energy supplies; and

(3) increasing energy conservation in low-income rural and urban communities.

(c) COMPETITIVE GRANTS.—In addition to grants described in subsection (b), the Secretary may provide grants on a competitive basis for—

(1) investments that develop alternative renewable and distributed energy supplies;

(2) energy efficiency projects and energy conservation programs;

(3) studies and other activities that improve energy efficiency in low-income rural and urban communities;

(4) planning and development assistance for increasing the energy efficiency of buildings and facilities; and

(5) technical and financial assistance to local government and private entities on developing new renewable and distributed sources of power or combined heat and power generation.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $20,000,000 for each of fiscal years 2003 through 2005.

**SEC. 302. RURAL AND REMOTE COMMUNITY ELECTRIFICATION GRANTS.**

Section 313 of the Rural Electrification Act of 1936 (7 U.S.C. 940c) is amended by adding at the end the following:

''(c) RURAL AND REMOTE COMMUNITIES ELECTRIFICATION GRANTS.—

''(1) DEFINITIONS.—In this subsection:

''(A) ELIGIBLE ENTITY.—The term 'eligible entity' means—

''(i) a unit of local government of a State or Territory;

''(ii) an Indian tribe; and

''(iii) a tribal college or university.

''(B) INDIAN TRIBE.—

''(i) IN GENERAL.—The term 'Indian tribe' means any Indian tribe, band, nation, or other organized group or community that is recognized as being eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

''(ii) INCLUSIONS.—The term ''Indian tribe'' includes a Alaskan Native village, Regional Corporation, and Village Corporation (as defined in or established under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.)).

''(C) TRIBAL COLLEGE OR UNIVERSITY.—The term 'tribal college or university' has the meaning given the term in section 316(b)(3) of the Higher Education Act (20 U.S.C. 1059c(b)(3))).

''(2) GRANTS.—The Secretary, in consultation with the Secretary of Energy and the Secretary of the Interior, may provide to an eligible entity 1 or more grants for the purpose of—

''(A) increasing energy efficiency;

''(B) siting or upgrading transmission and distribution lines; or

''(C) providing or modernizing electric facilities.

''(3) GRANT CRITERIA.—The Secretary shall provide grants under this subsection based on a determination of the most effective and cost-efficient use of the funds to achieve the purposes of this subsection.

''(4) PRIORITY.—In providing grants under this subsection, the Secretary shall give priority to renewable energy facilities.

''(5) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection $20,000,000 for each of the 7 fiscal years following the fiscal year in which this subsection is enacted.''.

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By Mr. DASCHLE:

S. 425. A bill to revise the boundary of the Wind Cage National Park in the State of South Dakota; to the Committee on Energy and Natural Resources.

Mr. DASCHLE. Mr. President, today I am introducing the Wind Cave National Park Boundary Revision Act of 2003. The Senate unanimously approved this legislation late last fall, but it was not considered by the House of Representatives before Congress adjourned for the year. I hope that my colleagues will again support this effort and that we can see this bill signed into law.

Wind Cave National Park, located in southwestern South Dakota, is one of the Park System's precious natural treasures and one of the Nation's first national parks. The cave itself, after which the park is named, is one of the world's oldest, longest and most complex cave systems, with more than 103 miles of mapped tunnels. The cave is well known for its exceptional display of boxwork, a rare, honeycomb-shaped formation that protrudes from the cave's ceilings and walls. While the cave is the focal point of the park, the land above the cave is equally impressive, with 28,000 acres of rolling meadows, majestic forests, creeks, and streams. As one of the few remaining mixed-grass prairie ecostytems in the country, the park is home to abundant wildlife, such as bison, deer, elk and birds, and is a National Game Preserve.

The Wind Cave National Park Boundary Revision Act will help expand the park by approximately 20 percent in the southern ''keyhole'' region. This land is currently owned by a ranching family that wants to see it protected from development and preserved for future generations. The land is a natural extension of the park, and boasts the mixed-grass prairie and ponderosa pine forests found in the rest of the park, including a dramatic river canyon. The addition of this land will enhance recreation for hikers who come for the solitude of the park's back country. It will also protect archaeological sites, such as a buffalo jump, over which early native Americans once drove the bison they hunted, and improve fire management.

This plan to expand the park has strong, but not universal, support in the surrounding community. The community's views were expressed during a recent 60-day public comment period on the proposal. Most South Dakotans recognize the value in expanding the park, not only to encourage additional tourism in the Black Hills, but to permanently protect these extraordinary lands for future generations of Americans to enjoy. Understandably, however, some are legitimately concerned about the potential loss of hunting opportunities and local tax revenue.

Governor Janklow has expressed his conditional support for the park expansion, stating that there must be no reduction in the amount of lands with public access that can currently be hunted, that there must be no loss of tax revenue to the county from the expansion, and that chronic wasting disease issue must be dealt with effectively. These are reasonable conditions that should be met as this process moves forward.

The legislation I am introducing today protects hunting opportunities for sportsmen by excluding 880 acres of School and Public Lands property from the expansion. In addition, Wind Cave National Park and the Trust for Public Lands are working with interested parties to find a way to offset the loss of local county tax revenues. Finally, I understand that the South Dakota Game, Fish, and Parks Department has reached an agreement with Wind Cave officials to expand research into chronic wasting disease, which will benefit wildlife populations nationwide. I am satisfied that the legitimate concerns about the potential expansion have been effectively addressed and today am moving forward to begin the legislative phase of this process.

In conclusion, Wind Cave National Park has been a valued American treasure for nearly 100 years. We have an opportunity with this legislation to expand the park and enhance its value to the public so that visitors will enjoy it even more during the next 100 years. It is my hope that my colleagues will again support this expansion of the park and pass this legislation in the near future.

I ask unanimous consent that the text of the legislation be printed in the RECORD.

Mr. INOUYE. Mr. President, I am pleased to join the distinguished former Chairman of the Committee on Energy and Natural Resources as an original co-sponsor of the Tribal Energy Self-Sufficiency Act.

This measure reflects the work of the House and Senate conferees on the comprehensive energy legislation in the last session of the Congress—the tribal provisions of the bill were approved by the conferees and it is those provisions which comprise the measure we introduce today.

We believe that the enactment of this measure will afford tribal governments the necessary authorizations and resources that they need to develop energy resources on their lands and thereby make a significant contribution to the Nation's energy needs.

We encourage our colleagues to support this measure as they did in the last session of the Congress.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 425

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Wind Cave National Park Boundary Revision Act of 2003''.

**SEC. 2. DEFINITIONS.**

In this Act:

(1) MAP.—The term ''map'' means the map entitled ''Wind Cave National Park Boundary Revision'', numbered 108/80,030, and dated June 2002.

(2) PARK.—The term ''Park'' means the Wind Cave National Park in the State.

(3) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

(4) STATE.—The term ''State'' means the State of South Dakota.

**SEC. 3. LAND ACQUISITION.**

(a) AUTHORITY.—

(1) IN GENERAL.—The Secretary may acquire the land or interest in land described in subsection (b)(1) for addition to the Park.

(2) MEANS.—An acquisition of land under paragraph (1) may be made by donation, purchase from a willing seller with donated or appropriated funds, or exchange.

(b) BOUNDARY.—

(1) MAP AND ACREAGE.—The land referred to in subsection (a)(1) shall consist of approximately 5,675 acres, as generally depicted on the map.

(2) AVAILABILITY OF MAP.—The map shall be on file and available for public inspection in the appropriate offices of the National Park Service.

(3) REVISION.—The boundary of the Park shall be adjusted to reflect the acquisition of land under subsection (a)(1).

**SEC. 4. ADMINISTRATION.**

(a) IN GENERAL.—The Secretary shall administer any land acquired under section 3(a)(1) as part of the Park in accordance with laws (including regulations) applicable to the Park.

(b) TRANSFER OF ADMINISTRATIVE JURISDICTION.—

(1) IN GENERAL.—The Secretary shall transfer from the Director of the Bureau of Land Management to the Director of the National Park Service administrative jurisdiction over the land described in paragraph (2).

(2) MAP AND ACREAGE.—The land referred to in paragraph (1) consists of the approximately 80 acres of land identified on the map as ''Bureau of Land Management land''.

**SEC. 5. GRAZING.**

(a) GRAZING PERMITTED.—Subject to any permits or leases in existence as of the date of acquisition, the Secretary may permit the continuation of livestock grazing on land acquired under section 3(a)(1).

(b) LIMITATION.—Grazing under subsection (a) shall be at not more than the level existing on the date on which the land is acquired under section 3(a)(1).

(c) PURCHASE OF PERMIT OR LEASE.—The Secretary may purchase the outstanding portion of a grazing permit or lease on any land acquired under section 3(a)(1).

(d) TERMINATION OF LEASES OR PERMITS.—The Secretary may accept the voluntary termination of a permit or lease for grazing on any acquired land.

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By Mr. DASCHLE:

S. 426. A bill to direct the Secretary of the Interior to convey certain parcels of land acquired for the Blunt Reservoir and Pierre Canal features of the initial stage of the Oahe Unit, James Division, South Dakota, to the Commission of Schools and Public Lands and the Department of Game, Fish, and Parks of the Stat of South Dakota for the purpose of mitigating lost wildlife habitat, on the condition that the current preferential leaseholders shall have an option to purchase the parcels from the Commission, and for other purposes; to the Committee on Energy and Natural Resources.

Mr. DASCHLE. Mr. President, today I am introducing the Blunt Reservoir and Pierre Canal Land Conveyance Act of 2003. This proposal is the culmination of more than 4 years of discussion with local landowners, the South Dakota Water Congress, the U.S. Bureau of Reclamation, local legislators, representatives of South Dakota sportsmen groups and affected citizens. It lays out a plan to convey certain parcels of land acquired for the Blunt Reservoir and Pierre Canal features of the Oahe Irrigation Project in South Dakota to the Commission of School and Public Lands of the State of South Dakota for the purpose of mitigating lost wildlife habitat, and provides the option to preferential leaseholders to purchase their original parcels from the Commission.

The bill I'm introducing today is the result of consultations with the Energy and Natural Resources Committee when it considered the bill last July. The committee incorporated changes to the legislation that will ensure a smooth transition of land from federal to private ownership, increase county tax revenues, as well as provide the tools and future funding necessary to help the state of South Dakota improve wildlife habitat and public hunting opportunities. The Senate unanimously approved this legislation late last fall, but it was not considered by the House of Representatives before Congress adjourned for the year. I hope that my colleagues will once again support this effort, and that we can see this bill signed into law.

To more fully understand the issues addressed by the legislation, it is necessary to review some of the history related to the Oahe Unit of the Missouri River Basin project in South Dakota.

The Oahe Unit was originally approved part of the overall plan for water development in the Missouri River Basin that was incorporated in the Flood Control Act of 1944. Subsequently, Public Law 90–453 authorized construction and operation of the initial stage of this unit. The purposes of the Oahe Unit, as authorized, were to provide for the immigration of 190,000 acres of farmland, conserve and enhance fish and wildlife habitat, promote recreation and meet other important goals.

The project came to be known as the Oahe Irrigation Project. The principal features of the initial stage of the project included the Oahe pumping plant, located near Oahe Dam, to pump water from the Oahe Reservoir; a system of main canals, including the Pierre Canal, running east from the Oahe Reservoir; and, the establishment of regulating reservoirs, including the Blunt Dam and Reservoir, located approximately 35 miles east Pierre, SD.

Under the authorizing legislation, 42,155 acres were to be acquired by the Federal Government in order to construct and operate the Blunt Reservoir feature of the Oahe Irrigation Project. Land acquisition for the proposed Blunt Reservoir feature began in 1972 and continued through 1977. A total of 17,878 acres usually were acquired from willing sellers.

The first land for the Pierre Canal feature was purchased in July 1975 and included the 1.3 miles of Reach 1B. An additional 21-mile reach was acquired from 1976 through 1977, also from willing sellers.

Organized opposition to the Oahe Irrigation Project surfaced in 1973 and continued to build until a series of public meetings were held in 1977 to determine if the project should continue. In late 1977, the Oahe project was made a part of Presidents Carter's Federal Water Project review process.

The Oahe project construction was then halted on September 30, 1977, when Congress did not include funding in the fiscal year 1978 appropriations. Thus, all major construction contract activities ceased, and land acquisition was halted.

The Oahe Project remained an authorized water project with a bleak future and minimal chances of being completed as authorized. Consequently, the Department of Interior, through the Bureau of Reclamation, gave those persons who willingly had sold their lands to the project, and their descendants, the right to lease those lands and use them as they had in the past until they were needed by the Federal Government for project purposes.

During the period from 1978 until the present, the Bureau of Reclamation has administered these lands on a preferential lease basis for those original landowners or their descendants, and on a non-preferential basis for lands under lease to persons who were not preferential leaseholders. Currently, the Bureau of Reclamation administers 12,978 acres as preferential leases and 4,304 acres as non-preferential leases in the Blunt Reservoir.

As I noted previously, the Oahe Irrigation Project is related directly to the overall project purposes of the Pick-Sloan Missouri Basin program authorized under the Flood Control Act of 1944. Under this program, the U.S. Army Corps of Engineers constructed four major dams across the Missouri River in South Dakota. The two largest reservoirs formed by these dams, Oahe Reservoir and Sharpe Reservoir, cause the loss of approximately 221,000 acres of fertile, wooded bottomland that constituted some of the most productive, unique and irreplaceable wildlife habitat in the State of South Dakota. This included habitat for both game and non-game species, including several species now listed as threatened or endangered. Meriwether Lewis, while traveling up the Missouri River in 1804 on his famous expedition, wrote in his diary, ''Song birds, game species and furbearing animals abound here in numbers like none of the party has ever seen. The bottomlands and cottonwood trees provide a shelter and food for a great variety of species, all laying their claim to the river bottom.''

Under the provisions of the Wildlife Coordination Act of 1958, the State of South Dakota has developed a plan to mitigate a part of this lost wildlife habitat as authorized by Section 602 of Title VI of Public Law 105–277, October 21, 1998, known as the Cheyenne River Sioux Tribe, Lower Brule Sioux Tribe,

and State of South Dakota Terrestrial Wildlife Habitat Restoration Act. The State's habitat mitigation plan has received the necessary approval and interim funding authorizations under Sections 602 and 609 of Title VI.

The State's habitat mitigation plan requires the development of approximately 27,000 acres of wildlife habitat in South Dakota. Transferring the 4,304 acres of non-preferential lease lands in the Blunt Reservoir feature to the South Dakota Department of Game, Fish and Parks would constitute a significant step toward satisfying the habitat mitigation obligation owed to the state by the Federal Government and as agreed upon by the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service, and the South Dakota Department of Game, Fish and Parks.

As we developed this legislation, many meetings occurred among the local landowners, South Dakota Department of Game, Fish and Parks, business owners, local legislators, the Bureau of Reclamation, as well as representatives of sportsmen groups. It became apparent that the best solution for the local economy, tax base and wildlife mitigation issues would be to allow former Blunt Reservoir and Pierre Canal landowners to repurchase their former lands, on which they currently hold preferential leases, from the Bureau of Reclamation, BOR. The bill also will transfer non-preferentially-leased lands and unleased lands to the South Dakota Department of Game, Fish, and Parks, GFP, as part of its broader plan to restore wildlife habitat that was lost due to the construction of the Missouri River dams. Under the provisions agreed to by the Senate Energy and Natural Resources Committee last summer, the South Dakota Commission of School and Public Lands would be responsible for working out the terms for selling the preferentially-leased lands to the former landowners.

The bill will not only rightfully return property to South Dakotans, but also ensure the viability of the local land and tax bases. The legislation authorizes the creation of a trust fund that would be used to create a trust fund to pay the local taxes on those lands transferred to State. The trust fund would be through future appropriations by Congress.

The State of South Dakota, the Federal Government, the original landowners, the sportsmen and wildlife will benefit from this bill. It provides for a fair and just resolution to the private property and environmental problems caused by the Oahe Irrigation Project some 25 years ago. We have waited long enough to right some of the wrongs suffered by our landowners and South Dakota's wildlife resources.

Again, I am hopeful the Senate will act quickly on this legislation. Our goal is to enact a bill that will allow meaningful wildlife habitat mitigation to begin, give certainty to local landowners who sacrificed their lands for a defunct federal project they once supported, ensure the viability of the local land base and tax base, and provide well maintained and managed recreation areas for sportsmen.

I ask unanimous consent that the text of the legislation be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 426

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Blunt Reservoir and Pierre Canal Land Conveyance Act of 2003''.

**SEC. 2. BLUNT RESERVOIR AND PIERRE CANAL.**

(a) DEFINITIONS.—In this section:

(1) BLUNT RESERVOIR FEATURE.—The term ''Blunt Reservoir feature'' means the Blunt Reservoir feature of the Oahe Unit, James Division, authorized by the Act of August 3, 1968 (82 Stat. 624), as part of the Pick-Sloan Missouri River Basin program.

(2) COMMISSION.—The term ''Commission'' means the Commission of Schools and Public Lands of the State.

(3) NONPREFERENTIAL LEASE PARCEL.—The term ''nonpreferential lease parcel'' means a parcel of land that—

(A) was purchased by the Secretary for use in connection with the Blunt Reservoir feature or the Pierre Canal feature; and

(B) was considered to be a nonpreferential lease parcel by the Secretary as of January 1, 2001, and is reflected as such on the roster of leases of the Bureau of Reclamation for 2001.

(4) PIERRE CANAL FEATURE.—The term ''Pierre Canal feature'' means the Pierre Canal feature of the Oahe Unit, James Division, authorized by the Act of August 3, 1968 (82 Stat. 624), as part of the Pick-Sloan Missouri River Basin program.

(5) PREFERENTIAL LEASEHOLDER.—The term ''preferential leaseholder'' means a person or descendant of a person that held a lease on a preferential lease parcel as of January 1, 2001, and is reflected as such on the roster of leases of the Bureau of Reclamation for 2001.

(6) PREFERENTIAL LEASE PARCEL.—The term ''preferential lease parcel'' means a parcel of land that—

(A) was purchased by the Secretary for use in connection with the Blunt Reservoir feature or the Pierre Canal feature; and

(B) was considered to be a preferential lease parcel by the Secretary as of January 1, 2001, and is reflected as such on the roster of leases of the Bureau of Reclamation for 2001.

(7) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior, acting through the Commissioner of Reclamation.

(8) STATE.—The term ''State'' means the State of South Dakota, including a successor in interest of the State.

(9) UNLEASED PARCEL.—The term ''unleased parcel'' means a parcel of land that—

(A) was purchased by the Secretary for use in connection with the Blunt Reservoir feature or the Pierre Canal feature; and

(B) is not under lease as of the date of enactment of this Act.

(b) DEAUTHORIZATION.—The Blunt Reservoir feature is deauthorized.

(c) ACCEPTANCE OF LAND AND OBLIGATIONS.—

(1) IN GENERAL.—As a condition of each conveyance under subsections (d)(5) and (e), respectively, the State shall agree to accept—

(A) in ''as is'' condition, the portions of the Blunt Reservoir Feature and the Pierre Canal Feature that pass into State ownership;

(B) any liability accruing after the date of conveyance as a result of the ownership, operation, or maintenance of the features referred to in subparagraph (A), including liability associated with certain outstanding obligations associated with expired easements, or any other right granted in, on, over, or across either feature; and

(C) the responsibility that the Commission will act as the agent for the Secretary in administering the purchase option extended to preferential leaseholders under subsection (d).

(2) RESPONSIBILITIES OF THE STATE.—An outstanding obligation described in paragraph (1)(B) shall inure to the benefit of, and be binding upon, the State.

(3) OIL, GAS, MINERAL AND OTHER OUTSTANDING RIGHTS.—A conveyance to the State under subsection (d)(5) or (e) or a sale to a preferential leaseholder under subsection (d) shall be made subject to—

(A) oil, gas, and other mineral rights reserved of record, as of the date of enactment of this Act, by or in favor of a third party; and

(B) any permit, license, lease, right-of-use, or right-of-way of record in, on, over, or across a feature referred to in paragraph (1)(A) that is outstanding as to a third party as of the date of enactment of this Act.

(4) ADDITIONAL CONDITIONS OF CONVEYANCE TO STATE.—A conveyance to the State under subsection (d)(5) or (e) shall be subject to the reservations by the United States and the conditions specified in section 1 of the Act of May 19, 1948 (chapter 310; 62 Stat. 240), as amended (16 U.S.C. 667b), for the transfer of property to State agencies for wildlife conservation purposes.

(d) PURCHASE OPTION.—

(1) IN GENERAL.—A preferential leaseholder shall have an option to purchase from the Commission, acting as an agent for the Secretary, the preferential lease parcel that is the subject of the lease.

(2) TERMS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), a preferential leaseholder may elect to purchase a parcel on one of the following terms:

(i) Cash purchase for the amount that is equal to—

(I) the value of the parcel determined under paragraph (4); minus

(II) ten percent of that value.

(ii) Installment purchase, with 10 percent of the value of the parcel determined under paragraph (4) to be paid on the date of purchase and the remainder to be paid over not more than 30 years at 3 percent annual interest.

(B) VALUE UNDER $10,000.—If the value of the parcel is under $10,000, the purchase shall be made on a cash basis in accordance with subparagraph (A)(i).

(3) OPTION EXERCISE PERIOD.—

(A) IN GENERAL.—A preferential leaseholder shall have until the date that is 5 years after enactment of this Act to exercise the option under paragraph (1).

(B) CONTINUATION OF LEASES.—Until the date specified in subparagraph (A), a preferential leaseholder shall be entitled to continue to lease from the Secretary the parcel leased by the preferential leaseholder under the same terms and conditions as under the lease, as in effect as of the date of enactment of this Act.

(4) VALUATION.—

(A) IN GENERAL.—The value of a preferential lease parcel shall be its fair market value for agricultural purposes determined by an independent appraisal, exclusive of the

value of private improvements made by the leaseholders while the land was federally owned before the date of the enactment of this Act, in conformance with the Uniform Appraisal Standards for Federal Land Acquisition.

(B) FAIR MARKET VALUE.—Any dispute over the fair market value of a property under subparagraph (A) shall be resolved in accordance with section 2201.4 of title 43, Code of Federal Regulations.

(5) CONVEYANCE TO THE STATE.—

(A) IN GENERAL.—If a preferential leaseholder fails to purchase a parcel within the period specified in paragraph (3)(A), the Secretary shall convey the parcel to the State of South Dakota Department of Game, Fish, and Parks.

(B) WILDLIFE HABITAT MITIGATION.—Land conveyed under subparagraph (A) shall be used by the South Dakota Department of Game, Fish, and Parks for the purpose of mitigating the wildlife habitat that was lost as a result of the development of the Pick-Sloan project.

(6) USE OF PROCEEDS.—Proceeds of sales of land under this Act shall be deposited as miscellaneous funds in the Treasury and such funds shall be made available, subject to appropriations, to the State for the establishment of a trust fund to pay the county taxes on the lands received by the State Department of Game, Fish, and Parks under the bill.

(e) CONVEYANCE OF NONPREFERENTIAL LEASE PARCELS AND UNLEASED PARCELS.—

(1) CONVEYANCE BY SECRETARY TO STATE.—

(A) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary shall convey to the South Dakota Department of Game, Fish, and Parks the nonpreferential lease parcels and unleased parcels of the Blunt Reservoir and Pierre Canal.

(B) WILDLIFE HABITAT MITIGATION.—Land conveyed under subparagraph (A) shall be used by the South Dakota Department of Game, Fish, and Parks for the purpose of mitigating the wildlife habitat that was lost as a result of the development of the Pick-Sloan project.

(2) LAND EXCHANGES FOR NONPREFERENTIAL LEASE PARCELS AND UNLEASED PARCELS.—

(A) IN GENERAL.—With the concurrence of the South Dakota Department of Game, Fish, and Parks, the South Dakota Commission of Schools and Public Lands may allow a person to exchange land that the person owns elsewhere in the State for a nonpreferential lease parcel or unleased parcel at Blunt Reservoir or Pierre Canal, as the case may be.

(B) PRIORITY.—The right to exchange nonpreferential lease parcels or unleased parcels shall be granted in the following order or priority:

(i) Exchanges with current lessees for nonpreferential lease parcels.

(ii) Exchanges with adjoining and adjacent landowners for unleased parcels and nonpreferential lease parcels not exchanged by current lessees.

(C) EASEMENT FOR WATER CONVEYANCE STRUCTURE.—As a condition of the exchange of land of the Pierre Canal Feature under this paragraph, the United States reserves a perpetual easement to the land to allow for the right to design, construct, operate, maintain, repair, and replace a pipeline or other water conveyance structure over, under, across, or through the Pierre Canal feature.

(f) RELEASE FROM LIABILITY.—

(1) IN GENERAL.—Effective on the date of conveyance of any parcel under this Act, the United States shall not be held liable by any court for damages of any kind arising out of any act, omission, or occurrence relating to the parcel, except for damages for acts of negligence committed by the United States or by an employee, agent, or contractor of the United States, before the date of conveyance.

(2) NO ADDITIONAL LIABILITY.—Nothing in this section adds to any liability that the United States may have under chapter 171 of title 28, United States Code (commonly known as the ''Federal Tort Claims Act'').

(g) REQUIREMENTS CONCERNING CONVEYANCE OF LEASE PARCELS.—

(1) INTERIM REQUIREMENTS.—During the period beginning on the date of enactment of this Act and ending on the date of conveyance of the parcel, the Secretary shall continue to lease each preferential lease parcel or nonpreferential lease parcel to be conveyed under this section under the terms and conditions applicable to the parcel on the date of enactment of this Act.

(2) PROVISION OF PARCEL DESCRIPTIONS.—Not later than 180 days after the date of enactment of this Act, the Secretary shall provide the State a full legal description of all preferential lease parcels and nonpreferential lease parcels that may be conveyed under this section.

(h) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this Act $750,000 to reimburse the Secretary for expenses incurred in implementing this Act, and such sums as are necessary to reimburse the Commission for expenses incurred implementing this Act, not to exceed 10 percent of the cost of each transaction conducted under this Act.

## SUBMITTED RESOLUTIONS

### SENATE RESOLUTION 60—AUTHORIZING EXPENDITURES BY THE COMMITTEE ON RULES AND ADMINISTRATION

Mr. LOTT (for himself and Mr. DODD) submitted the following resolution; which was referred to the Committee on Rules and Administration:

*Resolved*, That, in carrying out its powers, duties, and functions under the Standing Rules of the Senate, in accordance with its jurisdiction under rule XXV of such rules, including holding hearings, reporting such hearings, and making investigations as authorized by paragraphs 1 and 8 of rule XXVI of the Standing Rules of the Senate, the Committee on Rules and Administration is authorized from March 1, 2003, through September 30, 2003; October 1, 2003, through September 30, 2004; and, Oct. 1, 2004, through February 28, 2005, in its discretion (1) to make expenditures from the contingent fund of the Senate; (2) to employ personnel, and (3) with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, to use on a reimbursable or non-reimbursable basis the services of personnel of any such department or agency.

SEC. 2. The expenses of the committee for the period March 1, 2003, through September 30, 2003, under this resolution shall not exceed $1,288,413, of which amount (1) not to exceed $30,000 may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946, as amended), and (2) not to exceed $6,000 may be expended for the training of the professional staff of such committee (under procedures specified by section 202(j) of the Legislative Reorganization Act of 1946).

(b) For the period October 1, 2003, through September 30, 2004, expenses of the committee under this resolution shall not exceed $2,269,014, of which amount (1) not to exceed $50,000 may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946, as amended), and (2) not to exceed $10,000 may be expended for the training of the professional staff or such committee (under procedures specified by section 202(j) of the Legislative Reorganization Act of 1946).

(c) For the period October 1, 2004, through February 28, 2005, expenses of the committee under this resolution shall not exceed $967,696, of which amount (1) not to exceed $21,000 may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganizations Act of 1946, as amended), and (2) not to exceed $4,200 may be expended for the training of the professional staff of such committee (under procedures specified by section 202(j) of the Legislative Reorganization Act of 1946).

SEC. 3. Expenses of the committee under this resolution shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman of the committee, except that vouchers shall not be required (1) for the disbursement of salaries of employees paid at an annual rate, or (2) for the payment of telecommunications provided by the Office of the Sergeant at Arms and Doorkeeper, United States Senate, or (3) for the payment of stationery supplies purchased through the Keeper of the Stationery, United States Senate, or (4) for payments to the Postmaster, United States Senate, or (5) for the payment of metered charges on copying equipment provided by the Office of the Sergeant at Arms and Doorkeeper, United States Senate, or (6) for the payment of Senate Recording and Photographic Services, or (7) for payment of franked and mass mail costs by the Sergeant at Arms and Doorkeeper, United States Senate.

SEC. 4. There are authorized such sums as may be necessary for agency contributions related to the compensation of employees of the committee from March 1, 2003, through September 30, 2003; October 1, 2003, through September 30, 2004; and October 1, 2004, through February 28, 2005, to be paid from the Appropriations account for ''Expenses of Inquiries and Investigations.''

## AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. DEWINE. Mr. President, I ask unanimous consent that the Committee on Governmental Affairs be authorized to meet on Friday, February 14, 2003 at 9:30 a.m., for a hearing entitled ''Consolidating Intelligence Analysis: A Review of the President's Proposal to Create a Terrorist Threat Integration Center.''

The PRESIDING OFFICER. Without objection, it is so ordered.

## AUTHORIZATION TO SIGN ENROLLED BILLS AND JOINT RESOLUTIONS

Mr. FRIST. Mr. President, I ask unanimous consent that during this adjournment of the Senate, the majority leader or the assistant majority leader be authorized to sign duly enrolled bills or Joint Resolutions.